
Costs Decisions

Site visit made on 20 February 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2023

Costs application in relation to Appeal A Ref: APP/M0655/W/22/3294194 213 Higher Lane, Lymm, Warrington WA13 0RN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs M Stevenson for a full award of costs against Warrington Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of a single storey glass roof to the West elevation of the property.
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Costs application in relation to Appeal B Ref: APP/M0655/X/22/3299177 213 Higher Lane, Lymm, Warrington WA13 0RN

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Mark Stevenson for a full award of costs against Warrington Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the erection of a free standing canopy within the residential curtilage.
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Decisions

Appeal A

1. The application for an award of costs is allowed in the terms set out below.

Appeal B

2. The application for an award of costs is allowed in the terms set out below.

Preliminary Matters

3. These applications for the award of costs relate to two linked appeals. Appeal A relates to the failure of the Council to determine an application for planning permission and Appeal B relates to the failure of the Council to determine an application for a certificate of lawful use or development.

Reasons

4. Planning Policy Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. In the case of both costs

applications, these relate to the necessity to lodge appeals given the non-determination of the applications.

Appeal A

5. The applicants confirm the planning application was validated by the Council on 31 July 2020 and it was not until 6 April 2021 that they requested a full and detailed planning history of the site dating back to 1948. Following this request there was much correspondence had between the parties trying to ascertain what the original dwelling was.
6. The applicants confirmed with the Council that they did not have any plans of the historical planning permissions granted. Nevertheless, despite not retaining their own copies of the plans, the Council refused to determine the application without the requested details. The Council then went on to confirm with the appellant that unless they received full and accurate justification to support the application by 10 December 2021 they would treat the application as being 'finally disposed' of as outlined in Article 40(13) of the GPDO.
7. In such cases, the planning history of a site can be particularly useful in determining what the original building comprised. However, the absence of such information should not prevent the determination of the application. An assessment can still be made based on the evidence available, as I have done in the appeal decision. It was open to the Council to refuse the application without such information, which they in fact said they possibly would have done. However, they did not.
8. Moreover, the applicants presented a fallback position to the Council on 23 August 2021, which set out how a free-standing canopy could be erected under permitted development rights. Therefore, even if the Council took the position that the proposal was inappropriate development in the Green Belt, because it wasn't sufficiently demonstrated that it would not be a disproportionate addition to the original building, the fallback position may well have amounted to the very special circumstances required to outweigh the harm to the Green Belt. However, the Council appear to have not responded to the fallback position proposition. Had the Council fully engaged with the applicant's evidence, in particular the proposed fallback position, then they may well have granted planning permission, despite any reservations they had regarding the extent of the original building.
9. I acknowledge the Council's argument that they have very high caseloads. However, this is not sufficient justification for failing to address the applicant's argument concerning the fallback position.
10. In failing to determine the planning application, when they had sufficient information to do so, the Council behaved unreasonably. As I have found the proposed development to be acceptable and allowed the appeal, this unreasonable behaviour has unnecessarily delayed the development from taking place.
11. I therefore find that unreasonable behaviour resulting in wasted expense has been demonstrated and that a full award of costs is justified.

Appeal B

12. The application for the certificate was validated by the Council on 24 February 2022 with the eight week target date for determining the application being 20 April 2022.
13. In their statement of case for the appeal, the Council confirmed the height of the eaves of the proposed development exceeded that which is permitted under Class E, Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015. Therefore, the proposal would not be permitted development.
14. I acknowledge the Council were minded to inform the applicant of this on 19 May 2022, one month beyond the target date, but realised an appeal against non-determination of the application had already been lodged. I have concurred with the Council's finding and dismissed the appeal on this basis. Nevertheless, it is a relatively straightforward, indisputable reason why it is not permitted development that simply required a measurement to be taken from the plans submitted. Had this been done sooner and the applicant notified as such, it is highly unlikely that the appeal would have been made because it would have had no prospect of succeeding.
15. Whilst I acknowledge the Council have a very high caseload, the proposal is relatively straightforward and the Council's failure to determine it in the requisite time amounts to unreasonable behaviour. This unreasonable behaviour led to the submission of the appeal, resulting in the applicant incurring costs in the process. Had the Council determined the application, or indeed simply corresponded with the applicant, informing them the development exceeded the permitted development rights limitations, then it is highly unlikely the appeal would have been made and the applicant would not have incurred costs in the process.
16. I therefore find that unreasonable behaviour resulting in wasted expense has been demonstrated and that a full award of costs is justified.

Appeal A Costs Order

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Warrington Borough Council shall pay to Mr & Mrs M Stevenson, the costs of the appeal proceedings described in the heading of this decision.
18. The applicant is now invited to submit to Warrington Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeal B Costs Order

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Warrington Borough Council shall pay to Mr Mark Stevenson, the costs of the appeal proceedings described in the heading of this decision.

20. The applicant is now invited to submit to Warrington Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alexander Walker

INSPECTOR