



Costs Decision

Site visit made on 11 January 2023

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 13th March 2023

Costs application in relation to Appeal Ref: APP/N4720/W/22/3310150 Britannia House, 16 York Place, Leeds LS1 2EU

- 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 AS Plaza Ltd for a partial award of costs against Leeds City 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 creation of two rooftop penthouse apartments (resubmission of 20/07014/FU).
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG also states that the Inspector can take into account behaviour and actions at the time of the planning application when considering whether or not costs should be awarded. It also advises that in non-determination cases the Council may be at risk of an award of costs if there were no substantive reasons to justify delaying determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
4. While reference is made to an earlier application for the proposal (22/07014/FU) which was withdrawn, this is a separate matter which is not before me and therefore it has not been determinative in my assessment of the merits of this cost appeal.
5. This application for costs follows the failure of the Council to issue a notice of its decision within the prescribed period. The applicant has advised that the appeal has resulted due to the Council's lack of communication regarding design clarifications and planning update requests, and due to a procedural delay in considering an amended design submitted. They consider that these represented unreasonable behaviour and resulted in unnecessary and wasted expense.

6. In its appeal statements, the Council apologise for the non-determination of the application and confirm that they would have refused it and detailed the reasons for this. It also advises that the non-determination was due to delays and difficulties caused by the Covid-19 pandemic.
7. It is evident that the parties communicated reasonably well on the application up to 9 June 2022. Furthermore, the Council notified the applicant that it could not support the proposal with its reasons clearly outlined. In response to this, on 15 June 2022, the appellant submitted a relatively significant change to the proposal and, while this was a lesser scale of development, further appraisal by the Council was required. While communication from the Council appears to have been lacking, on 30 August 2022, the Council did advise that due to technical issues and an oversight the amended design had not been uploaded or processed. It confirmed the application would be processed and comments would be provided following an internal officer discussion. The appellant indicates that they tried to contact the Council for a further update on the 15 September 2022 without success. The Council does not dispute this.
8. Notwithstanding the lack of communication of the Council to the amended proposal, and the error in processing this, whilst understandably frustrating, no evidence that this was a deliberate obstruction to delay the process has been provided. Rather, that the Council advise that it was a result of a particular set of circumstances at the time relating to delays and effects from the Covid-19 pandemic.
9. In response to the appeal the Council has, in accordance with paragraph 048 and 049 of the PPG, explained its reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. Therefore, even if they had made their decision within the determination period it would not have prevented the need for the appeal. Furthermore, my dismissal of the appeal also demonstrates that the Council's behaviour has not prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
10. Therefore, on the balance of the evidence before me no action or inaction taken by the Council in this instance is such that it amounts to unreasonable behaviour resulting in unnecessary or wasted expense at appeal.

Conclusion

11. Overall, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, neither a full or partial award of costs is justified.

J Symmons

INSPECTOR