



Costs Decision

Site visit made on 14 November 2022

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 13 March 2023

Costs application in relation to Appeal Ref: APP/Q5300/W/22/3294731 397 Cockfosters Road, Enfield EN4 0JS

- 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 Georgiou for full award of costs against London Borough of Enfield.
 - 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 development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

Reasons

2. The application for a full award of costs is on the basis that London Borough of Enfield failed to determine the application within a reasonable time and failed to provide clear reasoning based on adopted policy for its stance. The applicant contends that, due to the above, the Council should be accountable for the costs of the appeal.
3. Planning Practice Guidance (PPG) 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. This includes the non-compliance with procedural requirements such as failing to meet deadlines or a lack of co-operation with the other party.
4. The Council advised that the application was validated in March 2021, and it was only in August 2021 that a change to the viability assessment was proposed by the applicant. It is further evident that following this requested change it was necessary for the Council to appoint a viability assessor and for this party to agree the viability assessment with the applicant.
5. The applicant confirmed the viability assessment was agreed with the viability assessor on 28 January 2022 and offered to pay the identified contribution direct to avoid the necessity for a section 106 obligation. The Council responded to this on 28 January advising that it would need to write a report on the application for consideration by the planning committee and would advise on an expected committee date.

6. On 18 February the applicant contacted the Council requesting confirmation that the application would be considered by 8 March planning committee. On 22 February the Council advised that the final viability assessment report from its viability assessor was only issued on 9 February and that, due to the Officer in charge of the application being on annual leave just after its issue, the planning committee report had not been progressed and as such the application had missed 8 March planning committee. The applicant requested clarification on whether the application would be considered by 22 March planning committee. The Council advised on 24 February that the planning committee dates were 22 March and 26 April and also provisionally 5 April. No further correspondence after this date regarding this matter has been provided and the appeal application was submitted on 13 March. Therefore determination of the application was not completed.
7. Based on the above it is clear that while the Council failed to determine the application within the statutory period, this was due to the Council co-operating proactively with the applicant's request to change the viability assessment and associated affordable housing contribution. It is reasonable and necessary for the Council to have been given time to fully consider these prior to finalising its decision. From January 2022, the Council did respond proactively to correspondence from the applicant and did give explanations to questions raised.
8. Furthermore, the Council did raise its concern regarding the appropriateness of providing a new section 106 obligation under a section 73 of the Town and Country Planning Act 1990 application through correspondence in September 2021.
9. In accordance with paragraph 47 of the National Planning Policy Framework 2021, referred as paragraph 196 by the applicant, the Council clearly articulated in the evidence submitted as part of the appeal the material considerations that indicated to it that the application should be refused. This included commentary on the Norfolk Homes High Court case. Accordingly, I consider that the Council has not failed to properly evaluate the application or consider the merits of the scheme. Although with my accompanying appeal decision I have found to the contrary, the Council had reasonable concerns about the impact of the proposal. The applicant would have had to address these concerns in any event.
10. Consequently, I find unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For this reason, and having had regard to all other matters raised, an award of costs is not justified and is refused.

J Symmons

INSPECTOR