



Costs Decision

Site visit made on 24 January 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2023

Costs application in relation to Appeal Ref: APP/T5150/W/22/3299035 272 Dollis Hill Lane, London NW2 6HH

- 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 Abbas Datoo, Firova for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of existing four bed house and construction of eight flats over two storeys and an attic floor.
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Decision

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

Reasons

2. 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 or wasted expense in the appeal process.
3. Unreasonable behaviour can relate to procedural matters (i.e., the appeal process) or substantive matters (i.e., issues related to the planning merits of the appeal). One of the examples relating to procedural matters, provided in the PPG, of behaviour by local planning authorities that may be deemed to be unreasonable, is failing to determine planning applications and delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Another example of unreasonable behaviour is delay in providing information or other failure to adhere to deadlines.
4. The PPG states that, if it is clear the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. Additionally, in any appeal against non-determination, the local planning authority should explain their 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. In such cases, if an appeal is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination. Such a decision would consider any unreasonable behaviour on the part of the appellant in causing or adding to the delay.

5. The applicant's planning application was not determined by the statutory deadline (12 April 2022).
6. However, prior to the determination deadline, on 1 April 2022, the LPA did contact the applicant outlining that there were many concerns with the proposal and that the application could not be supported and that the development would need a number of amendments and to be scaled back. Further adding that the viability assessment needed to be assessed externally at the cost of the applicant and advised that this may not be worthwhile given that the application would be refused.
7. Following the above communication, the applicant sought to contact the LPA on a number of occasions over a period of about 7 weeks without success.
8. During the appeal process, despite requesting and being offered an extension of time to submit its Statement of Case, the LPA failed to do so.
9. Whilst I have found the appeal against the applicant, I am aware that the applicant engaged with the LPA on a pre-application and also incorporated amendments to the appeal scheme, following this. As already stated, the applicant also contacted the LPA subsequent to the communication on 1 April 2022.
10. The applicant's pro-active approach suggests that it is more than likely, that had they been afforded the opportunity, they would have sought to resolve the LPAs concerns as part of the planning application process to avoid an appeal.
11. It appears the LPA failed to determine the planning application within the relevant time limit due to staff resourcing issues. Even so, this is of no assistance to the applicant.
12. Although the applicant was provided with an outline of the concerns about the proposal, this was vague. Therefore, the LPA has failed to substantiate its reasons as to why permission would not have been granted had the application been determined within the relevant period.
13. The LPA argues that it provided detailed feedback on a previous form of development and that some key areas flagged as concerns had not been addressed. However, the appeal scheme had evolved as a consequence of that feedback and had the LPA submitted a Statement of Case within the agreed timescale, this would have substantiated those concerns and assisted all parties in the appeal process.
14. Drawing on the above reasons, the LPA failed to determine the application within the statutory time limit, the applicant was also not afforded an opportunity to resolve the LPAs concerns about the proposal. Also, those concerns were vague and, in my judgement, fell short of a proper explanation. As such, the applicant would have been unable to redesign the scheme and resubmit a further application. Together, the factors that led to this situation amount to unreasonable behaviour on the LPAs part.
15. Under the circumstances, the applicant had no other option but to lodge an appeal against the non-determination of the planning application. Consequently, the applicant has incurred unnecessary expense in making the appeal.

16. Given the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

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 London Borough of Brent shall pay to Mr Abbas Datoo, Firova, the costs of the unnecessary time spent and the expense incurred by the applicant in the appeals proceedings, described in the headings of this decision, as a result of the unreasonable behaviour outlined.
18. The applicant is now invited to submit to London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Aqbal

INSPECTOR