



Costs Decision

Site visit made on 13 February 2023

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Costs application in relation to Appeal Ref: APP/U5360/W/20/3259190 51A Kenninghall Road, Hackney, London E5 8BS

- 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 Chris Wallace for a partial award of costs against the Council of the London Borough of Hackney.
 - 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 one 4 storey building over lower ground, upper ground, first and second floor levels and one 2 storey building over ground and first floor levels providing a total of five residential units (one 4-beds, one 3-beds and three 2-bed) (Use Class C3); erection of a single-storey building at ground floor level in front (southwest) part of site to provide employment space (Use Class B1); associated external works including excavation of lightwells, provision of refuse, recyclables and bicycle storage, landscaping and boundary treatments; and reinstatement of vehicle crossover.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Council of the London Borough of Hackney was subject to a cyber-attack in October 2020, which, amongst other things, resulted in the loss of many documents associated with the application that was subject to this appeal.
4. Setting aside the cyber-attack the applicant considers the late submission of appeal documents and a lack of communication to be unreasonable behaviour from the Council, which has caused them to experience delays in the appeal process.
5. The unnecessary or wasted expense incurred by the applicant concerns employing a planning consultant and employing a solicitor to draft the submitted unilateral undertaking.
6. I accept the cyber-attack has caused the Council some significant problems, which have affected its Planning service, including addressing this appeal. However, well over two years have passed since the cyber-attack occurred and it is not acceptable to simply blame this event for any subsequent delays.

7. The Council states that its IT systems were not restored on 6 January 2023, the appeal Questionnaire and associated documents were submitted on 23 December 2022, and the Appeal Statement on 6 January 2023, showing some level of restoration.
8. Given the cyber-attack it is not clear that the Council has behaved unreasonably in failing to adhere to the appeal timescales specified in the Start letter dated 1 August 2022. Nevertheless, I am satisfied the Council has behaved unreasonably in not keeping the applicant better apprised of the situation, including when the disruption would be expected to cease.
9. However, whilst the Council has behaved unreasonably in the appeal process through poor communication, it is not clear to me that the applicant has incurred unnecessary or wasted expense as a result. Employing a Planning consultant and a solicitor would be expected for the appeal proposal and it has not been shown that additional expenses beyond what would ordinarily be expected have been incurred.
10. The applicant also refers to an email from the Planning Inspectorate to their agent, in which it is stated that the Council had contacted all appellants affected by the 2020 cyber-attack and had asked them to re-submit their applications for free. However, the applicant states the Council did not contact them in this regard.
11. This would have been an alternative means of progressing the proposal in the difficult circumstances following the cyber-attack and it is unclear why the Council did not contact the applicant regarding this. However, whilst I am not party to what has been said or done in this regard, I am satisfied that a re-submission would be procedurally outside the current appeal process and so beyond the scope of this costs application.
12. The applicant also states they paid the Council for further 'pre-application discussions' in 2022, after the appeal was made, to try and find a way forward in the circumstances. No written feedback was provided by the Council following these discussions. However, it should be noted that once an appeal against the failure to give notice of a decision within the appropriate period for a planning application has been accepted by the Planning Inspectorate, the Council no longer has any jurisdiction in relation to it. Consequently, any response provided by the Council would have been meaningless.
13. The applicant makes reference to contradictory advice given by the Council regarding the design of the proposal, including the pre-appeal support of officers and the objections set out in the appeal statement. This is certainly unhelpful behaviour from the Council. However, the views of officers are not the formal position of the Council as Local Planning Authority (LPA) and any such views are not binding. The appeal was made without the Council's formal position as LPA being established by way of a Decision Notice. Consequently, I do not consider that the Council's behaviour in this regard would be deemed unreasonable as set out in PPG.
14. The applicant also states that if the planning application had been determined in accordance with the specified timescale, the new Hackney Local Plan would not have been adopted and the affordable housing contribution policy would not apply. However, these matters do not concern the appeal process.

15. Whilst I recognise the applicant's frustration with delays which are beyond their control, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated and that an award of costs is not justified.

Andrew Parkin

INSPECTOR