



Costs Decision

Site visit made on 16 May 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Costs application in relation to Appeal Ref: APP/Z1775/W/22/3308310 7 Oyster Mews, French Street, City of Portsmouth, PORTSMOUTH PO1 2JS

- 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 Steve Langton for a full award of costs against Portsmouth 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 construction of two dormer windows to rear slope; two roof lights to front roof slope.
-

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, Planning Practice Guidance (PPG) advises that costs may 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. PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as a lack of co-operation with other parties. PPG also indicates that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation.
4. If an appeal in such cases is allowed, the Council 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 and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.
5. In this case, the applicant considers the Council acted unreasonably given the non-determination of the application within the prescribed period of time, and because it did not respond to enquiries from the applicant's agent during the application process.
6. I have received no reasons from the Council about why a decision was not reached within the relevant time limit or whether it would have granted planning permission as requested. The appellant has referred to a previous

appeal decision¹ concerning 7 Oyster Mews which was dismissed in April 2022. As explained in the Appeal Decision, the planning application sought to address the reason for the dismissal of the previous appeal.

7. On the basis of the evidence before me, reasons for the delay in making a decision are not clear. The appeal was not made with any undue haste following the expiry of the statutory determination period. It was made nearly 5 months after the submission of the application. I have not heard from the Council about any delays that may have given rise to this. The Council has failed to provide a Statement of Case that fully explains their reasons for not reaching a decision in a timely manner and it has failed to substantiate why permission would not have been granted had the application been determined within the relevant period.
8. PPG explains that in an appeal against non-determination the local planning authority should explain why planning permission would not have been granted had the application been determined within the relevant period. The PPG specifically cites not reviewing a case promptly following the lodging of an appeal against non-determination as part of sensible ongoing case management, as an example of unreasonable behaviour by an authority.
9. In this case, the Council failed to indicate within the requisite appeal timescale what its decision would have been had it been in a position to determine the application. As no specific explanation has been given as to why the Council did not review the case promptly following the lodging of the appeal, I find the Council behaved unreasonably in this respect.
10. The applicant has incurred costs in the appeal process. Had there been timely communication from the Council this appeal could potentially have been avoided as the applicant may not have chosen to appeal. On this basis, the applicant has wasted time and expense in pursuing the appeal.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

12. 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 Portsmouth City Council shall pay to Mr Steve Langton, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Portsmouth City 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.

J White

INSPECTOR

¹ APP/Z1775/D/21/3283459