



Costs Decision

Site visit made on 4th April 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Costs application in relation to Appeal Ref: APP/P5870/W/22/3304223 Station House, 33 North Street, Carshalton, Sutton SM5 2HW

- 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 Dream Homes Estate Agents Limited for a full award of costs against the London Borough of Sutton.
 - The appeal was against the refusal of planning permission to demolish existing building and construct a four storey building with commercial use at ground level and four residential units at upper floor levels.
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Decision

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

Reasons

2. Planning Policy 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.
3. The applicant contends that the Council failed to determine the application within time limits, without giving the applicant a proper explanation, and, in doing so, delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations.
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.
5. In response, the Council state that officers clearly raised their concerns in relation to the proposals through their pre-application feedback prior to the submission of the planning application. The Council also advised through emails sent on 16th May 2022 of their specific concerns related to the appeal. Whilst an appeal against non-determination was submitted prior to the Council issuing a decision notice, the Council's Statement of Case identifies the reasons for refusal which would have been included within the decision notice had one been issued. These are complete, precise, specific and relevant to the development proposed, and detail the alleged harm and relevant local and national planning policies that the Council allege the proposal conflicts with.

6. Whilst I appreciate that the reasons for refusal that the Council provided following the submission of the appeal will have been a disappointment to the appellant, the Council were not unreasonable in coming to that decision, and indeed following consideration of the application on its merits alone, I have concurred with the Council.
7. The applicant contends that the Council provided no proper explanation as to why the application had not been determined 4 months after a decision was due to be issued, and that during correspondence the Council did not indicate when a decision would be made.
8. In response, the Council state that the applicant sought to continue to negotiate the proposals after the eight week target date. This included the submission of additional highways information on 21st March 2022 and a Preliminary Bat Roost Assessment (PBRA) on 17th June 2022. Notwithstanding this, the delay in the determination of the application was significant. From the evidence before me the Council first provided detailed feedback on 16th May 2022, four months after the validation of the application on 14th January 2022.
9. The absence of any meaningful communication from the Council during that period would have been frustrating. This behaviour conflicts with the advice in the PPG which states 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. However, based on the evidence, it is highly unlikely that better communication or a faster determination would have enabled the appeal process to be avoided altogether.
10. Fundamentally, the information before me indicates that planning permission would have been refused even if the application had been determined sooner. In particular, the absence of a PBRA, which was not submitted until 6 months after the validation of the application, would have formed a reason for refusal. Even following the receipt of the PBRA, the Council continue to have concerns with amount of information provided, and this lack of evidence forms one of the reasons for refusal. Consequently, I find that there was not unnecessary or wasted expense incurred through entering into the appeal process.
11. While the applicant incurred indirect costs from the extended application process, the PPG is clear that costs cannot, in any event, be claimed for the period during the determination of the planning application. Costs can only be awarded in relation to unnecessary or wasted expense at the appeal.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

B Pattison

INSPECTOR