



Costs Decision

Site visit made on 23 May 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th June 2023

Costs application in relation to Appeal Ref: APP/H5390/W/22/3310507 52-70 Fitz-George Avenue, London W14 0SW

- 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 Michael Wrennall (St Luke's Properties (UK) Ltd) for a full award of costs against London Borough of Hammersmith and Fulham.
 - 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 creation of three self-contained flats (2x1 bed and 1 X 2 beds) at rear lower ground floor level through change of use of the existing basement storage area and excavating and enlarging the existing basement level, creation of new lightwells and associated installation of new windows and doors, and erection of a bike store without complying with conditions attached to planning permission Ref 2016/04789/FUL, dated 12 June 2017.
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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, the Planning Practice Guidance (the 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. The application for costs is founded on the Council's lack of communication during the consideration of the application, its unreasonable objections to the proposals when feedback was eventually received, and its reluctance to accept revisions to the application to overcome the concerns that had been raised.
4. The PPG makes it clear that costs cannot be claimed for the period during the determination of the planning application. However, it says that all parties are expected to behave reasonably throughout the planning process and that, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.
5. The applicant's evidence catalogues a series of attempts to engage in dialogue with the Council to see how the planning application was progressing, and whether any additional information or revisions were necessary to secure a positive outcome. The lack of meaningful dialogue was explained by the Council at the time as being due largely to staff shortages, sickness, and annual leave.

Whilst I have a degree of sympathy on all of these counts, the fact remains that, despite concerted efforts to illicit information from January 2022 to June 2022, the applicant had little idea how or when the application was likely to be determined.

6. When the Council did provide feedback, on 16 June 2022, it stated that the application would be refused later on the same day. The applicant contended that the objections raised were not based on sound evidence, and requested time to seek a positive resolution. However, the Council said no further amendments would be accepted. This approach does not accord with the advice at paragraph 38 of the National Planning Policy Framework that local planning authorities should approach decisions on proposed development in a positive and creative way, and work proactively with applicants to secure developments that will improve the economic, social, and environmental conditions of the area. It also says that decision-makers at every level should seek to approve applications for sustainable development where possible.
7. Whilst the Council had arguable concerns regarding the submitted plans, the evidence shows that the applicants were willing to work towards overcoming them, and that fundamental changes were not necessarily required to achieve this. As it turns out, the Council did not determine the application that day, as indicated, and the applicant submitted a further set of plans, with relatively minor alterations, on 20 June 2022. In my decision, I found that these plans would provide suitable living conditions for future occupants with regard to internal living space, light, outlook, and outdoor amenity space. These were the main concerns raised by the Council four days earlier.
8. The Council has provided no explanation of why the application still remained undetermined until 4 November 2022, when the appeal was lodged. In view of the previous delays and lack of pro-active engagement from the Council, it is unsurprising that, over four months after submitting the amended scheme, the applicants felt compelled to appeal against non-determination.
9. The PPG says local planning authorities are at risk of an award of costs by unreasonably failing to determine planning applications, or by delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations. In this case, the Council failed to respond meaningfully to an application that was validated on 25 November 2021, until 16 June 2022. It then declined to pro-actively engage with the applicant to seek a positive outcome, and failed to respond at all to modest changes to the scheme for over four months. The failure to determine the application amounts to unreasonable behaviour. As I found the proposal to be acceptable, the Council's behaviour also delayed a development that should have been permitted.
10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

11. 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 the London Borough of Hammersmith and Fulham shall pay to Mr Michael Wrennall

(St Luke's Properties (UK) Ltd), 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 the London Borough of Hammersmith and Fulham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Nick Davies

INSPECTOR