



Costs Decision

Site visit made on 4 July 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Costs application in relation to Appeal Ref: APP/G5180/W/22/3313311 103C Peacock House, Station Road, West Wickham, Bromley BR4 0PX

- 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 Mrs Ila Vashee for a full award of costs against the London Borough of Bromley.
 - The appeal was against the refusal of planning permission described as formation of a mansard pitch roof to existing flat roof at 103c Station Road to incorporate two-1 x bedroom flats which will include internal and external alteration and part demolition.
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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 the case officer allocated to this case unfortunately went on long term sick leave. As a result, the case was reallocated to another officer who already had a significant number of cases to deal with. More generally, the Council state that they have experienced unprecedented pressures to the delivery of the Development Management service as a result of the COVID-19 pandemic, an increase in planning application submissions and staff resourcing pressures due to a shortage of suitably qualified planning officers.
6. 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.

7. The applicant contends that the Council has not contacted the applicant since the receipt of the planning application was acknowledged. This is not disputed by the Council. Consequently, the delay in the determination of the application was significant. From the evidence before me the Council acknowledged the application on 5th May 2022, whilst the appeal against non-determination was submitted on 16th December 2022.
8. The absence of 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 before me, it is highly unlikely that better communication or a faster determination would have enabled the appeal process to be avoided altogether.
9. Fundamentally, the information before me indicates that had the Council determined the application it would have refused it for the reasons set out in the appeal documentation. Given the above, the applicant would have needed to appeal against the decision of the Council anyway to gain permission for the development (or submit a further application to the Council).
10. 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.
11. Therefore, having considered all the evidence put forward by the parties, I consider that the appeal could not have been avoided and that the appellant has consequently not been put to unnecessary expense through the Council's delay in determining the application.

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. A claim for costs is not therefore justified and accordingly it is refused.

B Pattison

INSPECTOR