The Planning Inspectorate

Costs Decision

Site visit made on 24 May 2023

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Costs application in relation to Appeal Ref: APP/M1005/W/23/3315622
2 Loscoe Road, Heanor, Derbyshire DE75 7FF

- 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 Shaek Miah for a full award of costs against Amber Valley Borough 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 demolition of the existing outbuildings, the erection of 2 no. semi-detached 3 bedroom dwellings, change of use to provide a 2 bedroom maisonette and the change of use of the existing retail unit to provide a 2 bedroom self-contained flat at Loscoe Convenience Stores, 2 Loscoe Road, Heanor.

Decision

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

Reasons

2 The Planning Practice Guidance 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 appellant lists a number of dates where attempts were made by the appellant to obtain feedback from the Council about the pending planning application. The lack of response prompted the appellant to lodge an appeal against the failure of the Council to make a decision within the prescribed time period. The lack of communication from the Council leads me to consider that there was very little by way of co-operation forthcoming from the Council.

4. I acknowledge the Council's difficulties regarding workloads and the recruitment and retention of planning staff but this does not adequately explain its lack of communication during the processing of the planning application. However, I have no evidence that the lack of communication was a deliberate intention to delay the application. Even so, I consider that the lack of communication represents unreasonable behaviour in dealing with the planning application that

directly led to the appellant believing that the only option for a decision was to lodge an appeal.

5. The Council state that if it had been given the opportunity to determine the planning application, it would have refused it. As can be seen from my appeal decision, I also found harm and conflict with the development plan and I dismissed the appeal accordingly. It therefore follows that the Council's failure to determine the application did not prevent or delay development that should have been permitted in accordance with the development plan. Taking into account the background to the appeal scheme, including a previous application that was amended to remove overlooking windows, it seems reasonably likely that even if the Council had determined the application the appeal could not be avoided.

6. Consequently, while costs have been incurred in the appeal process, and I have found that the Council behaved unreasonably, I do not find that the applicant incurred unnecessary or wasted expense in the appeal process.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, an award of costs is not justified.

J D Clark

INSPECTOR