



Costs Decision

Site visit made on 17 July 2023

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Costs application in relation to Appeal Ref: APP/U5360/W/22/3312205 3 Tan House, Springdale Road, London N16 9EH

- 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 and Ms Jack and Jade Coysh-Hewes for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was made against a failure to give notice within the prescribed period of a decision on an application for planning permission for a "new roof terrace".
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, in either a substantive or procedural way, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The procedural matters include a delay in providing information or other failure to adhere to deadlines. It is an accepted principle that parties in planning appeals normally meet their own expenses.
3. The applicants claim that the Council has acted unreasonably in being uncontactable and refusing to engage in dialogue with the applicants. It is also stated that the Council's planning officer did not respond to requests to visit the appeal site. The applicants also say that the site was wrongly identified on the Council's website and updated drawings have still not been uploaded to the website. It is contended that the Council's behaviour has had a material effect on the agent's ability to maintain a sustainable practice.
4. The Council respond that it was dealing with a high caseload at the time of the application as a result of lower staffing levels than normal, alongside ongoing issues emanating from a cyber attack which resulted in the loss of many pending applications and Council records. This placed a large strain on resources. Owing to these factors communication between the Council and the applicants was not as frequent as desired and led to no decision being made on the application. However, there remained communication between the planning officer and the applicants. The Council considers that the appeal proposal does not address the issues raised by a similar application for a roof terrace at the site which was refused in March 2022. Moreover, the Council contend that even if it had issued a decision on the application this would have been a refusal of planning permission. Therefore, the likely outcome would have been an appeal.

5. Having regard to the advice of the PPG, the Council's failure to determine the application in a timely manner and its lack of communication with the applicants during the application amounts to unreasonable behaviour.
6. Nevertheless, it is clear that, had the Council made a decision on the application, it would have refused permission. Furthermore, whilst I fully appreciate the applicants' frustration over the Council's unreasonable behaviour, I have concluded in my decision that the appeal should fail on grounds of the effects on the living conditions of neighbouring occupiers. As such, despite the lack of communication from the Council and the fact that it did not deal with the application in a timely manner, the appeal was in any event necessary. I am not convinced that further engagement or discussions with the applicants would have avoided the need for the appeal.
7. It is unfortunate that the Council did not respond to requests to visit the site and that the updated drawings were not uploaded to the Council's website. However, these alleged procedural issues occurred during the application process rather than the appeal process. There is no substantive evidence before me to show that a site visit would have resulted in a different outcome. Based on the Council's objections, the appeal would still have been necessary.
8. It is evident that the Council did not provide the required appeal documents, including its statement of case and costs rebuttal promptly following the submission of the appeal. The Council was required to submit its statement of case by 4 May 2023 but did not do so until 12 July 2023. This contributed to the matters raised in the Council's evidence being introduced at an unnecessarily late stage in the appeal process. This late submission was accepted under the Planning Inspectorate's discretionary powers as it assisted in clarifying the main issues. The applicants were given 10 days to provide any final comments in response to the late evidence but did not do so. Nevertheless, the failure of the Council to meet the appeal deadline falls within the procedural examples of unreasonable behaviour listed in the PPG.
9. However, whilst the Council acted unreasonably in this regard, this did not affect the substantive matters before me and the appeal would have been required and the costs of appeal incurred in any event. It has not been demonstrated that these matters have put the applicants to wasted or unnecessary expense.

Conclusion

10. For the reasons set out above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and therefore the application for a full award of costs is refused.

M Ollerenshaw

INSPECTOR