



Costs Decision

Site visit made on 20 June 2023

by Robert Naylor Bsc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2023

Costs application in relation to Appeal Ref: APP/G5180/W/22/3303582 Brook House, Chislehurst Road, Chislehurst BR1 2NJ

- 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 A Yazdani for a full award of costs against the Council for the London Borough of Bromley.
 - The appeal was against the failure to give notice within the prescribed period of a decision on an application for planning permission described as the "Demolition of existing building and the erection of a building containing 9 flats with associated underground and surface car parking, cycle parking, bin storage and associated landscaping (revision following extant planning approval ref: 20/00723/FULL1)."
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Decision

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

Reasons

2. The Planning Practice Guidance (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 Guidance is clear in setting out the circumstances in which a Local Planning Authority (LPA) could be vulnerable to an award of costs against it. It also goes on to advise of the circumstances in which a LPA's handling of the planning application prior to an appeal may lead to an award of costs.
4. The appeal relates to the Council's failure to determine the application within the prescribed period. The PPG states that if it is clear to an LPA that it will fail to determine an application within time limits it should give the applicant a proper explanation.
5. I would acknowledge that the Council's workload and staffing pressures are likely to have been compounded by pandemic-induced factors. Nevertheless, it should have been evident to the Council earlier than was communicated to the applicant that it would not be possible to determine the application within the prescribed timescales.
6. I note that whilst the Council have provided correspondence, a considerable period of time had elapsed since the submission of the planning application. The applicant was therefore intitled to exercise his right under section 78(2)(a) of the Act¹ to appeal against the Council's failure to determine the application. The relative dates of the application for an award of costs and the appeal

¹ Town and Country Planning Act 1990 (as amended)

submission are indicative of the appellant's frustration with the Council's poor and reactive (rather than proactive) communication and the overall delays in the determination of the application. As such, I find that the Council did not act in a communicative, timely or pro-active manner as advised by the PPG, instead reacting to, rather than pre-empting, the applicant's prompts to provide belated updates.

7. With regard to the stated ground for the application for an award of costs against the Council, I find that the Council's handling of the planning application amounts to unreasonable behaviour. However, for a costs application to be successful, unreasonable behaviour must also result in unnecessary costs being incurred by the successful party. The PPG states that if an appeal against a failure to determine is allowed, the LPA may be at risk of costs if it is concluded that there were no substantive reasons to justify delaying the determination and that better communication with the applicant would have avoided the appeal altogether².
8. However, the Council has clearly set out within its Statement of Case the reasoning why, had it determined the application, it would have resolved to refuse the application. In this case, the Council has provided a number of grounds on which they set out why permission would not have been granted had the application been determined within the relevant period. Whilst I have come to different conclusions to the Council on two of these grounds, I have found the scheme to be contrary, in part to the Development Plan in respect to the living conditions of nearby residents with specific regard to overlooking and loss of privacy.
9. Consequently, I am therefore satisfied that even if the Council had made their decision within the statutory timescale, the application would have been refused and an appeal would have resulted. Therefore, I do not find that the delays in the Council determining the application prevented or delayed a development which should clearly have been permitted. There was not, as a consequence, unnecessary or wasted expense as the Council's case was well-founded and justified.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, the application for costs is refused.

Robert Naylor

INSPECTOR

² Paragraph: 048 Reference ID: 16-048-20140306