



Costs Decision

Site visit made on 17 July 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2023

Costs application in relation to Appeal Ref: APP/M0655/W/22/3310740 155 Chester Road, Grappenhall and Thelwall, Warrington WA4 2SB

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs Critchley for a full award of costs against Warrington 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 planning permission for the retention of a summerhouse in the rear garden (as built) (4.51m wide x 11.76m long, with a height of 5.17m to ridge; 2.79m to eaves).
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 application relies on the fact that the Council failed to determine the planning application within the prescribed time limits; concern regarding a lack of communication with the Council during the application process; preventing or delaying development which should clearly be permitted; and vague, generalised or inaccurate assertions about a development's impact.
4. It is clear that the planning application process ran beyond the 8-week deadline. I appreciate that the failure of the Council to determine the application within the prescribed timeframe will have been frustrating to the applicant, however, the evidence before me suggests that the Council forewarned the applicant that they would experience a delay in the determination of their application, provided an anticipated determination date, and kept the applicant informed of progress. While the Council's delays in providing copies of requested information and not answering the applicant's questions was unhelpful, I have no substantive evidence that this resulted in the applicant incurring any unnecessary or wasted expense in the appeal process.
5. The Council's delay in determining the application may have been stressful for the applicant as it would have prolonged the Council's decision whether to take enforcement action. However, the delay experienced in the determination of the planning application would not have put the applicant at risk of enforcement action, as it would not be expedient for the Council to take action against a development while it is considering an application to retain it as built.

Therefore, it was not necessary for the applicant to lodge an appeal against non-determination to reduce the risk of enforcement action being taken.

6. Prior to submitting the planning application, the applicant was aware of the Council's concerns in respect of the summerhouse as built, both through the planning enforcement process and via a previous planning application¹ that sought permission for its retention and was subsequently amended at the Council's request. Therefore, it would not have been unexpected that in resubmitting an identical application to retain the building, the Council's concerns would remain unchanged, and the lodging of an appeal would have been likely.
7. The Council informed the appellant that it was going to recommend refusal of the application and that it may be necessary for the application to be determined by the Council's planning committee, which may have delayed the determination of the planning application further. Therefore, the lodging of an appeal would have been necessary, even if the Council had determined the application within the 8-week timeframe.
8. The acceptability or otherwise of the building as built on the living conditions of the occupiers of neighbouring properties and on the character and appearance of the surrounding area, are matters of subjective judgement. The Council was therefore entitled to come to the view that the development as built was not acceptable and did not comply with the relevant policies contained within the development plan. Although it can be seen from my decision that I do not share the Council's view, this does not constitute unreasonable behaviour on behalf of the Council.
9. The Council's appeal statement is detailed, precise and clearly states the policies of the Warrington Borough Council Local Plan Core Strategy, adopted 2014 and the Council's SPD that the proposal would be in conflict. It also states that there have been no material changes since the consideration of a previous planning application², whereby the Council raised concerns regarding the structure as built, that would make the appeal scheme acceptable. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits or otherwise of the scheme.

Conclusion

10. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. Therefore, an award of costs would not be justified in this case.

A Berry

INSPECTOR

¹ Planning Ref: 2021/40207

² Planning Ref: 2021/40207