



Costs Decision

Site visit made on 8 September 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2023

Costs application in relation to Appeal Ref: APP/N5090/W/22/3312714 1 Parson Street, Hendon, Barnet, London NW4 1QD

- 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 Philip Pell (Sentware Ltd) for a full award of costs against the Council of the London Borough of Barnet.
 - 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 existing building and construction of part three/part four storey mixed use building comprising 8 residential units and office floorspace at ground floor level. Associated amenity space, refuse storage, cycle parking and off-street parking.
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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. In this case the Council failed to give notice within the prescribed period of a decision on an application for planning permission. The PPG advises 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. 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.
4. I have allowed the appeal and granted planning permission. In this scenario, the PPG goes on to state that the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
5. Contrary to this advice, I have no substantive evidence before me which indicates that the Council provided the applicant with a proper explanation why the application could not be determined in a timely manner. Neither has a clear explanation for the delays been provided during the appeal process. The determination time limit provided by the Council was 5 August 2022. The applicant lodged the appeal in December 2022. The period of delay was therefore considerable. This all indicates to me that the Council has exhibited some poor communication with the applicant.

6. However, within the appeal process the Council have explained why they would not have granted planning permission and this included 2 specific putative refusal reasons. Each relates to living conditions. I have identified no unacceptable harm would result from the proposal but, this is a matter of judgement.
7. Some of the Council's conclusions in relation to the proposed development are not clear to me. This includes their assessment of the submitted Daylight, Sunlight and Overshadowing Report. However, overall, it was not unreasonable of the Council to come to the view that the effects of the proposed development upon the living conditions of existing and proposed occupiers would be unacceptable.
8. In coming to this view, I acknowledge that the scheme the subject of this appeal has sought to address those areas of harm identified by the Inspector in the earlier appeal decision¹. The extent to which the proposed development has resolved the harms the previous Inspector identified is also a matter of judgement and, again, it was not unreasonable for the Council to conclude that the proposal had not gone far enough to address all of them. In the round, the Council have adequately substantiated their objections to the proposal even though I have not agreed with them.
9. Given the Council's objections, it is not clear to me that better communication with the applicant would have enabled the appeal to be avoided altogether. Furthermore, I have found the Council's stance in relation to the proposal's effects upon living conditions was not unreasonable and it follows that I cannot conclude that they have prevented or delayed a development which should clearly have been permitted.
10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

H Jones

INSPECTOR

¹ Appeal decision reference APP/N5090/W/21/3277941