
Costs Decision

Site visit made on 17 October 2023

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Costs application in relation to Appeal Ref: APP/M0655/Q/23/3317054 43 Chaise Meadow, Lymm, Warrington WA13 9NX

- 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 Simon Wood for a full award of costs against Warrington Borough Council.
 - The appeal was against the refusal to discharge planning obligations of s106 agreement dated 4 October 2022 planning application A01/444111 pursuant to s106a Town and Country Planning Act 1990
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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. Some of the applicant's concerns relate to the conduct of the Council in dealing with their applications to discharge the planning obligation. The applicant made two attempts to discharge the obligation. In the first instance, it transpires that the correct process was not followed insofar as the application was made against s73 of the Town and Country Planning Act 1990 (the Act) which relates to removal of conditions. As a result, it was not possible to appeal that decision because the applicant had not followed the correct notification procedures. I understand that the fee for this application was refunded, albeit the refund took some time.
4. This precipitated the need for a second application. There were problems with this application as the Council seemingly did not have the correct forms for this type of procedure. The applicant's agent therefore took it upon themselves to formulate a form of their own which would ensure the application was considered under the correct procedures.
5. In terms of the first application, whether or not there were issues with the Council's validation process, the failure to identify and rectify a problem with the application or delays in refunding the applicant's fees, these do not relate to *this* appeal process or the associated application. As such, it is outside the scope of the appeal and thus the costs application before me.

6. In terms of the second application, while the lack of an appropriate form is less than ideal, a valid application was still eventually able to be made, the Council were able to consider it under the correct legislation and a valid appeal was then made on the back of their decision. There is nothing to suggest these procedural issues had any bearing on the decision or whether the appeal, or associated expenditure, would not have been necessary had the process been more efficient. As such, I see no evidence of any wasted or unnecessary expense relating to the appeal in this respect.
7. It is suggested that the lack of appropriate forms and/or assistance from the Council made it necessary to appoint professional assistance. The decision for the applicant to appoint an agent is one for them to make and is not unusual. This is also unlikely to have had any effect on the outcome of the application or the need for the appeal to take place. On this basis, I am also not persuaded that wasted or unnecessary expense has resulted from the Council's behaviour.
8. The applicant's second concern is that the Council has not adequately substantiated their reason for refusal. While the applicant may strongly disagree with the Council's case, I find that adequate information was submitted with the appeal for me to understand their position and the reason for refusal. That I ultimately agreed with the Council's position also demonstrates that this is not a case where 'permission' should clearly have been granted. Again, there is nothing to suggest that the behaviour of the Council resulted in an unnecessary appeal or associated costs in this respect.
9. The applicant has also referred to the financial implications of not allowing the application in terms of the value of the property and/or moving elsewhere. However, the costs regime relates only to the costs associated with the appeal process and nothing else. These factors therefore also fall outside the scope of the application.

Conclusion

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

S J Lee

INSPECTOR