



Costs Decision

Site visit made on 13 November 2021

by R Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2023

Costs application in relation to Appeal Ref: APP/R2330/D/23/3328492

- 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 Mrs Shaw for a full award of costs against Hyndburn Borough Council.
 - The appeal was against the refusal of planning permission for a two storey rear extension to replace existing conservatory and single storey side extension/garage conversion.
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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. Unreasonable costs can be substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature.
3. Examples of unreasonable behaviour that may lead to an award of costs against the Council are given in the PPG and may concern non-compliance with procedural requirements. Section 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires, where planning permission is refused, the notice to include a statement explaining, whether, and if so how, in dealing with the application, the local planning authority have worked with the applicant in a positive and proactive manner. The first part of the applicant's case is that this statement has not been included in the notice, which I accept. There has therefore been a non-compliance with a procedural requirement. I am not, however, persuaded that this has resulted in unnecessary or wasted expense.
4. It is clear that despite efforts made by the applicant there was very limited communication with the Council and a protracted period of both validation and determination. An extension of time to determine the application was also sought from the applicant, after the notice was issued. The applicant clearly did not agree to this. The Council explains that there was a delay in making an inspection of the proposals from within the site and subsequent determination, due to work-load. Whilst I appreciate that this is frustrating (and the delays could have been communicated with the applicant), it is not unusual and delay does not, in itself, amount to unreasonable behaviour.

5. I also note that it was open to the applicant to engage with the Council, either formally or informally, prior to submission of the application. I recognise that attempts have been made by the applicant's agent to contact the Council since the notice was issued, but it is also accepted that a pre-application enquiry was not made, which would have enabled early guidance to be given. I further have no substantive evidence before me that the Council misled the applicant on the site visit. The summary of that meeting provided by the applicant in an email of 19th July 2023 itself comments that the Officer '*needed to write up the report and submit to Manager*' and that there '*should be no significant issues with the proposal, however he did need to complete reading the reports submitted by the other departments.*' These suggest that further consideration was required by the Officer, rather than providing the level of assurance alleged by the applicant.
6. The second part of the applicant's case is that further information in respect of the potential for bats and contaminated land would have been provided should it have been requested during determination of the planning application. The Council's Delegated Report is clear in their statutory duty in respect of protected species and Policy DM19 of the Development Management DPD (2018) sets out the requirement for appropriately detailed surveys where proposals may affect protected species. It is also evident from the email exchange submitted with the applicant's evidence that the requirement for a bat survey was discussed between the appellant and their agent prior to determination; a requirement not uncommon for proposals affecting a roofspace. The Council's case is that the Reason for Refusal cited in respect of contamination was intended to inform the preparation of a revised application for resubmission. Whilst this Reason has been addressed in the applicant's Statement of Case, no substantive, or unnecessary expense, has been incurred in doing so.
7. In conclusion, whilst I sympathise with the level of communication and time taken, I find the Council's Delegated Report fully, and clearly substantiate the Reasons for Refusal and I am not persuaded by the evidence before me that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Consequently, an award of costs is not justified.

R. Jones

INSPECTOR