



Costs Decision

Site visit made on 21 November 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2023

Costs application in relation to Appeal Ref: APP/Q4625/W/23/3323191 Hampton Court, 55 Marsh Lane, Hampton in Arden, Solihull B92 0EW

- 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 Sattar Shah for a full award of costs against Solihull Metropolitan 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 conversion of remainder of roof space to create two additional apartments thereby providing a total of six apartments in the roof space.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and so caused the applicant unnecessary expense in the appeal process. This application claims unreasonable behaviour by the Council in terms of (i) refusing planning permission despite officers' recommendation that permission should be granted and the refusal reason being factually incorrect, and (ii) not determining the application within the statutory timescale and not seeking an extension of time to determine the planning application.
3. While the appeal is lodged on the basis of a failure to make a decision, the Council has provided a decision notice that sets out its single objection to the proposal. This decision was made by the Council's Planning Committee against the advice of its officers. The Committee is not duty bound to follow officers' advice but it has to clearly demonstrate on planning grounds why a proposal would be unacceptable.
4. The Council's objection claims that proposed parking space number 5 would be "located immediately adjacent to the relocated bin and bike store". The appeal drawing proposed parking plan (3) clearly shows a gap between this parking space and the front of the cycle store while the bin store would be further away. In these regards, the Council's objection is based upon an inaccurate assertion about the proposal.
5. Moreover, the highway officer's comments dated 10 March 2023 include a specific reference to the cycle store and bin store being set back compared to a previous proposal. It is stated that satisfactory circulation space would be provided to ensure the proposed parking spaces can be appropriately accessed. No explanation has been provided by the Council through the appeal process as

to why it disagrees with the highways officer views in these regards. Therefore, it has failed to substantiate its concerns with the scheme.

6. The applicant claims the Council issued its decision on the planning application after the appeal was lodged. Even if this is accepted, it is clear from the submissions that the Council intended to refuse planning permission. As such, an appeal would have been required in any event and so I find no reason why any delay in issuing a decision has caused unnecessary expense.
7. However, the Council has raised unsubstantiated concerns contrary to the advice of its officers and based on inaccurate claims over the relationship between parking space number 5 and the store buildings. In these regards, it has acted unreasonably. The applicant has had to lodge an appeal that otherwise would have been unnecessary. A full award of costs is justified to cover the expense in lodging the appeal. The fact the applicant has submitted various different planning applications that relate to the same site has no influence on my views on the matter.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Solihull Metropolitan Borough Council shall pay to Sattar Shah the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathan Edwards

INSPECTOR