
Costs Decisions

Site visit made on 7 November 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 11th December 2023

Costs application in relation to Appeal A Ref: APP/T0355/W/22/3313272 Brookfield Lodge, Datchet Road, Horton, Slough, SL3 9PS

- 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 Daljit Bhail for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - 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 single storey link extension between existing cottage and summer room.
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Costs application in relation to Appeal B Ref: APP/T0355/Y/22/3313273 Brookfield Lodge, Datchet Road, Horton, Slough, SL3 9PS

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Daljit Bhail for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for listed building consent for single storey link extension between existing cottage and summer room.
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Decision – Application in relation to Appeal A

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

Decision – Application in relation to Appeal B

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

Reasons

3. 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.
4. The applicant submits that the Council did not communicate adequately before the appeals were lodged. Evidence submitted however demonstrates that the applicant was made aware of the likely delay and the reasons for it in good time.
5. The lack of a site visit cannot of itself constitute unreasonable behaviour. The Council is of the view that it already had a sufficient understanding of the site, and there is nothing before me to demonstrate that a failure to carry out a

further visit resulted in a misunderstanding of the site or the proposal to the extent that not visiting should be considered unreasonable behaviour.

6. Furthermore, costs applications are primarily concerned with matters at the appeal stage. The PPG establishes that 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. The reasons for the delay are explained; and in its appeal statement the Council sets out clearly the decisions it would have made had it still been able to determine the applications. Therefore, there is no evidence of behaviour before me that could lead to substantive awards of costs.
7. The applicant submits that the Council did not respond to his invitation to determine the applications if he withdrew the appeals. Once an appeal against non-determination has been made, the Council is unable to determine the application. What happens in cases where such appeals have been withdrawn is an untested area of law. There would be some logic in assuming that once an appeal against non-determination has been withdrawn it is no longer live and that nothing further can occur. Given this level of uncertainty I cannot accept that the Council's failure to respond to the applicant's request constitutes unreasonable behaviour.
8. I note that some incorrect information was provided by the Council during the appeal process. Whilst frustrating to the applicant, these were minor matters that were unrelated to the main matters of dispute between the parties. The Council's behaviour in this respect was unreasonable; however, for an award of costs to be made, that unreasonable behaviour needs to have resulted in unnecessary or wasted expense. Without any evidence to the contrary, I am satisfied that unnecessary or wasted expense did not occur in relation to this matter.
9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and awards of costs are not warranted.

A Tucker

INSPECTOR