

Costs Decision

Site visit made on 19 July 2023

by N Kempton BAHons, PGDip, MA, IHBC, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Costs application in relation to Appeal Ref: APP/U5930/W/23/3316518 208 Higham Hill Road, LONDON E17 5RQ

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Raj Properties Limited for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for development for the change of use of first floor from Sui Generis, to C3 a separate one bed studio apartment. Reconfiguration of the ground floor front and rear elevations to create new access. Subdivision of the rear garden to create separate private amenity to newly created flat.
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Decision

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

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. The PPG sets out 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. If an appeal in such cases is allowed, 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.
4. The claimant's grounds are that with no credible reason for delay, the Council failed to determine the application within the prescribed timescale; it failed to proactively engage with the applicant; and it refused to consider amendments or planning conditions which may have enabled the appeal to be avoided. This caused them to incur unnecessary or wasted expense in pursuing the appeal, which constitutes unreasonable behaviour.
5. The planning application was validated on 1 November 2022. It should therefore have been determined by 28 December 2022. Despite the Council having visited the site on 20 December 2022, a decision on the application was not forthcoming. Numerous efforts by the applicant to engage with the Council were not reciprocated and offers from the applicant to amend any aspects of the proposal that might be of issue, were not granted. An extension of time for determination was not agreed. On 3 January 2023, after the target decision

date had passed, the Council informed the applicant that the application would be recommended for refusal.

6. Despite having been informed that the decision would be issued by the Council on 16 January 2023, the application remained undetermined on 22 January 2023. At this point, the applicant sent a chasing email, to which there appears to have been no response. A further unanswered chasing email was sent on 7 February 2023. The applicant appealed on 11 February 2023.
7. The Council has offered no evidence to rebut the applicant's claim. It did not determine the planning application within the time limit. It gave the applicant no explanation to justify the delay and it has given no substantive reason for the delay in response to this application for costs.
8. There is no evidence of any unreasonable behaviour on the part of the applicant in causing or adding to the delay. It is clear that better communication with the applicant may have enabled the appeal to have been avoided altogether. This was unreasonable behaviour.
9. While the ground of amendments and conditions is no longer relevant as the Council did not determine the application, I nonetheless conclude that, for the reasons above, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A full award of costs is justified.

Costs Order

10. 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 THE Council of the London Borough of Waltham Forest shall pay to Raj Properties Limited, 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.
11. The applicant is now invited to submit to the Council of the London Borough of Waltham Forest, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

N Kempton

INSPECTOR