



Costs Decision

Site visit made on 9 January 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th January 2024

Costs application in relation to Appeal Ref: APP/Y3425/X/22/3308583 The Lock House, Trent Lane, Great Haywood, Staffordshire, ST18 0ST

- 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 Mr Mark Edwards for a full award of costs against Stafford 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 a certificate of lawful use for the use of the land and buildings as a single dwellinghouse.
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Decision

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

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 states 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 [a lawful development certificate (LDC)] would not have been granted had the application been determined within the relevant period.
4. The Council's statements explain that unprecedented high workloads led to delays or failures to respond to regular chasing enquiries by the applicant, and ultimately led to a failure to determine the application prior to notification of the appeal. In the context of competing casework priorities across the board, the Council acknowledge that this dictated that some communications were delayed or were not responded to.
5. Whilst it is incumbent on the local planning authority to seek to issue timely decisions, there is little to demonstrate that the delay in this particular case was any different to other casework being considered at that time. Despite the extent of delay, I am unable therefore to conclude that it was tantamount to unreasonable behaviour.
6. Although the level of communication from the Council in response to enquiries made by the applicant was indeed intermittent and limited, it nevertheless sought to canvass further evidence and clarification on submissions in the spirit of co-operation. Requests were made on 1 July 2022 and 19 August 2022 seeking clarification and substantiation of claims made by the applicant.

7. As I have found, the sum of the information submitted and in response to those requests did not clearly address the concerns raised. The further claims made in response by the applicant were similarly not backed by substantive evidence. The applicant's focus on the balance of evidence between the main parties was subsequently misplaced. It did not absolve the onus and requirement on the applicant to provide precise and unambiguous evidence to demonstrate on the balance of probability that the change of use occurred on or before the relevant date.
8. As part of the tests set out in the PPG and *Gabbitas*¹, and respectively raised by the main parties during the period of consideration of the application, I cannot find that there was unreasonable behaviour in the Councils approach or its putative reason for refusal. Contrary to the applicant's position, it was not for the Council to deal with discrepancies in the applicant's evidence.
9. The applicant asserts that the Council's failure to extract their own evidence by reference to the relevant Council Tax department was tendentious. However, despite clear evidence of frustrated attempts to do so, for the purposes of demonstrating the commencement of use of commercial floorspace for residential purposes, that information was of limited relevance. Moreover, I find the claim of a wilful failure to disclose information that may have assisted the applicant has not been demonstrated. Given the burden of proof, this cannot be tantamount to unreasonable behaviour on the part of the Council.
10. The correspondence of 19 August 2022, from the Council to the applicant's agent, raised the concern that the Council considered that the information provided was insufficient to issue an LDC. It highlighted a shortfall in the evidence that was not subsequently directly addressed. In effect, it was confirming that the Council was not in a position to support the application. Accordingly, having regard to that and the Council's position in the appeal, it seems to me that had the Council issued a decision an appeal was inevitable.
11. For the above reasons, I find that the applicant's concerns that the Council failed to engage, failed to provide any evidence to counter the claims made by the applicant, and failed to issue a timely decision did not amount to unreasonable behaviour resulting in unnecessary or wasted expense. An award of costs is not therefore warranted.

R Hitchcock

INSPECTOR

¹ *Gabbitas v SSE & Newham LBC* [1985] JPL630