



Costs Decision

Site visit made on 19 October 2023

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2024

Costs application in relation to Appeal Ref: APP/Q5300/W/23/3318121 Garages, Dysons Road, London N18 2DJ

- 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 Philip Heaton for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the refusal of details pursuant to condition Nos 3 and 7 of a planning permission Ref 22/00804/FUL granted on 6 May 2022.
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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 (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 applicant's submission seeks costs in relation to both procedural and substantive matters. I shall address these points in turn.
4. In procedural terms, paragraph 047 of the PPG states that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. Examples of unreasonable behaviour which may result in an award of costs include lack of co-operation with the other party or parties, delay in providing information, or other failure to adhere to deadlines. Paragraph 033 of the PPG states that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. The applicant refers to the Council's repeated requests to extend the determination period, and the applicant's agreement to such requests on the understanding that this would lead to collaboration regarding the submitted details. The applicant claims that the Council failed to collaborate to any reasonable extent and refused the application without giving the applicant the chance to provide amended details. It is also claimed that the Council failed to collaborate in discussions initiated by the applicant after the decision was issued, which sought to avoid the need to submit an appeal. I am provided with copies of correspondence during this period. Furthermore, the applicant refers

- to the Council's delay in submitting the required details during the appeal process.
6. The Council counters these claims by advising that the decision was issued within the agreed timescales and was supported by robust reasoning, including the comments of the Transport Officer. Furthermore, the Council claims the appellant has chosen to initiate an appeal over other options which were and are available for parties to work collaboratively.
 7. Based on the evidence provided it appears that, despite the best efforts of the applicant, the Council failed to cooperate with the applicant during the application process. I therefore find this constitutes unreasonable behaviour that has resulted in unnecessary or wasted expense.
 8. I do not agree with the Council's claim that the applicant has chosen to initiate the appeal over other options. From the evidence available, due to the Council's lack of collaboration, it seems the applicant was left with very little alternative other than to appeal, particularly given the nature of the application which related to the approval of details for a scheme already benefitting from planning permission. Furthermore, the Council's delay in providing the necessary details for the appeal to proceed have resulted in additional delays to the process.
 9. I note the Council's alleged lack of response to correspondence following the determination of the application, which sought to avoid the need for an appeal. However, because these discussions took place outside of a formal application and I am not aware of any processes the Council may have in place for such discussions, this offers limited weight in my decision. Nevertheless, this does not detract from the evident unreasonable behaviour on procedural grounds found above.
 10. In substantive terms, paragraph 049 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of unreasonable behaviour that may result in an award of costs include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 11. The applicant refers to the Council's failure to thoroughly review the submitted details, leading to misinterpretation of their substance. This relates principally to the references in the Council's consultation responses and officer report to folding cycle storage, when the submitted details related to standard cycles. The Council has not specifically responded to the claim that the details were misinterpreted.
 12. Just because I have reached an alternative view to the Council in determining the appeal, it does not necessarily follow that the Council has behaved unreasonably in their assessment. Such occurrences are often matters of planning judgement, where parties can reasonably reach differing conclusions on such matters.
 13. However, as referenced in the appeal decision, I concur with the applicant's claim that the submitted details propose storage for standard cycles. Whilst

this may not have comprised the Council's only concern with the submitted details, the reference to folding cycles forms a key part of the Council's assessment, and the available evidence demonstrates this to be inherently incorrect. As such, this comprises a vague and inaccurate assertion that is unsupported by objective analysis, and I consider this to amount to unreasonable behaviour on substantive grounds.

14. The appellant has submitted an invoice setting out the costs incurred as part of the appeal process. Paragraph 044 of the PPG sets out that an Inspector or Secretary of State can only address the principle of whether costs should be awarded in full or in part, and not the amount – this is settled subsequently between the parties. Where a costs order is made, the party awarded should first send details of their costs to the other party, with a view to reaching agreement on the amount.

Conclusion

15. I find that unreasonable behaviour by the Council resulting in unnecessary and wasted expense, as described by the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

16. 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 Enfield shall pay to Mr Philip Heaton, 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.
17. The applicant is now invited to submit to the Council of the London Borough of Enfield, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

P Storey

INSPECTOR