



Costs Decision

Hearing held on 9 January 2024

Site visit made on 9 January 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2024

Costs application in relation to Appeal Ref: APP/H2733/X/22/3312536

The Old Hall, West Lane, Snainton, Scarborough YO13 9AR

- 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 Mrs Helen Burrows for a full award of costs against Scarborough 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 or development for the *use of the land for purposes incidental to the use of the dwellinghouse and the siting of two shepherd huts (caravans) for ancillary use, including the provision of hard surfaces, steps and canopies attached to them.*
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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 awards against local planning authorities may be either procedural, in respect of behaviour in relation to the appeal process, or substantive, which relates to the planning merits of the appeal. In this case, the applicant is seeking a full award of costs in relation to both procedural and substantive matters.
4. In summary the applicant's claim is made on the basis that the Council gave no reason why they failed to determine the application within the relevant period, they would not cooperate and discuss the detail of the application with the applicant, nor agree to matters in a draft statement of common ground that would have saved time at the Hearing. Moreover, they consider that the Council withheld evidence, and that their notification letter was worded to encourage evidence to be provided to support their case.
5. 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 application can be taken into account in the Inspector's consideration of whether costs should be awarded.
6. The Council's response included a timeline of the application. Although communication may have been limited, the Council in an email dated 27 May 2022 advised the applicant that they did not consider the submitted evidence

was sufficiently clear and unambiguous, and advised that they would proceed to determine the application on that basis. However, they offered the applicant the opportunity to submit additional evidence subject to an agreed extension of time.

7. Whilst there does not appear to be any evidence which indicates that a proper explanation was given to the applicant regarding the delay in determining the application, the applicant agreed to that, and several more extensions of time.
8. Nevertheless, the Council failed to issue a decision on the application within the relevant period. In their appeal statement they explained that due to the amount of evidence provided it took them longer than usual to assess the information thoroughly, at a time when the Council was experiencing high volumes of work and a reduction in staff.
9. Whilst I acknowledge the Council's explanation, the applicant should not have had to chase the Council for a decision. Having regard to the advice of the PPG, the Council's failure to provide a proper explanation and determine the application in a timely manner, amounts to unreasonable behaviour.
10. Nevertheless, whilst the Council did not provide the applicant with a copy of a draft report, they provided a statement in response to the appeal. It is clear from that statement, had the Council made a decision on the application, it would have refused to grant a certificate for the reasons set out in that submission. Accordingly, it is evident that the appeal could not have been avoided.
11. Whilst the applicant may not agree with the Council's interpretation of the evidence, the onus of proof in an application for an LDC is upon the applicant. The consideration is not based on planning merits, and in respect of curtilage, whilst I reached a different conclusion to the Council, case law is clear that it is a fact and degree assessment and a judgement for the decision maker. Their approach was not therefore unreasonable.
12. A statement of common ground, signed by both parties, was submitted. It is not unusual that there are matters that the parties do not agree on, and there is no evidence that the Council's unwillingness to agree some matters, led to any undue delay in the appeal process.
13. The applicant also stated that the Council withheld evidence, specifically in respect of the holiday letting of the huts. The applicant's reference to section 194 of the Act is erroneous, since that applies to the person/s procuring a particular decision on an application e.g., the applicant, not the Local Planning Authority.
14. It is surprising that the Council did not provide any evidence of the alleged holiday letting as part of their initial submissions however, since my decision did not turn on this matter, the appellant cannot have incurred unnecessary or wasted expense.
15. The Council's notification letter includes the information that The Planning Inspectorate requires the Local Planning Authority to include. In any case, given that there were no representations as a result of the letter, there cannot be any unnecessary or wasted expense incurred by the applicant.

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Felicity Thompson

INSPECTOR