



Costs Decision

Site visit made on 4 January 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2024

Costs application in relation to Appeal Ref: APP/P1560/W/23/3315944 The Tavern, 55-57 Frinton Road, Holland on Sea CO15 5UH

- 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 A Smith, Anglia Holland Pub and Clubs Limited for a full award of costs against Tendring District Council.
 - The appeal was against the refusal of planning permission for change of use and conversion of first and second floors to create 4 x two-bedroom flats, elevational changes to the building, demolition of single storey extension, erection of 3 x two-bedroom houses, parking, landscaping and turning area.
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Decision

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

Reasons

2. The applicant's application for costs is based on the alleged unreasonable behaviour of the local planning authority ('LPA') and wasted expense, for reasons, as considered below.
3. Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only 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. Unreasonable behaviour in the context of an application for an award of costs may be either: procedural, relating to the process; or substantive, relating to the issues arising from the merits of the appeal.
5. LPAs are required to behave reasonably in relation to procedural matters at the appeal. To my knowledge, the LPA have adhered to the procedural requirements in the appeal process. Although the Head of Planning may have suggested to the applicant in a telephone conversation that there would be a positive outcome, the planning application was clearly refused and the costs application is not in respect of substantive matters.
6. However, the PPG does address scenarios where the LPAs handling of the planning application may lead to an award of costs. This mainly deals with appeals against non-determination, which is not the case in respect of the appeal before me.
7. In this case, the thrust of the applicant's costs application relates to the LPAs determination of the planning application. In particular, in relation to the

- alleged lack of communication with the applicant during the application process, and the excessive length of time taken to reach a decision.
8. Prior to submitting the application, the applicant had sought and obtained pre-application advice and also amended the submitted scheme in light of the advice received. Even so, based on the details before me and despite some initial issues in validation, the application was determined significantly outside the statutory period. I also note that, at times, there were considerable delays in the LPA responding to the applicant's questions and queries.
 9. Where a LPA fails to determine a planning application, the applicant has a right to appeal to the Secretary of State against non-determination. Whilst I have noted the applicant's reasons for not choosing to pursue this, that option was available. I am also aware that some of these delays were due to staffing issues and the applicant was also given the opportunity to escalate his complaint about the delays to management at the LPA.
 10. Despite the considerable delay in the processing of the applicant's application and responses to questions and queries relating to this, which are most unfortunate, the planning application was eventually determined by the LPA and a decision issued. As such, the delay in the determination of the application, did not in itself result in the appeal.
 11. Moreover, it is the LPAs decision to refuse the planning application which has resulted in the appeal. I have distilled the LPAs reason for refusing the applicant's application to a single main issue. The assessment of this issue is a matter of planning judgement. This involves some objective and subjective analysis having regard to the context of the site, the proposal and the development plan and any other considerations. To this end, the LPAs 'Delegated Decision Officer Report' and decision notice provide an adequate assessment of the proposal. Furthermore, the reason for refusal is specific to the proposal and is supported by relevant development plan policies.
 12. Therefore, and whilst I understand the applicant's frustrations in the delays associated with the application process, given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

M Aqbal

INSPECTOR