



Costs Decision

Site visit made on 14 May 2024

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Costs application in relation to Appeal Ref: APP/B0230/W/23/3334846 28 Derby Road, Luton LU4 0DH

- 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 Mrs Patel for a full award of costs against Luton 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 roof extension to facilitate loft conversion with replacement pitched roofs over existing flat roofs, rendered elevations and general refurbishment and associated internal alterations.
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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. This application claims unreasonable behaviour by the Council in terms of (i) preventing or delaying development which should clearly be permitted, and (ii) a delay in making a decision on the planning application and so forcing the appellant to submit the appeal against non-determination.
3. The Council did not determine the planning application leading to the appeal. However, it has explained its concerns with the proposal through the appeal process. For the reasons as set out in my appeal decision, I agree with some of the Council's objections. Therefore, it follows the development is not clearly permissible as claimed by the appellant.
4. The Council has provided copies of emailed correspondence between the planning officer and agent acting on behalf of the appellant for the planning application. These show that the Council's concerns with the development were raised with the appellant and an offer was made to provide advice on how to overcome these objections, albeit with a charge. To my mind, these actions show a willingness from the Council to work with the appellant.
5. The response from the appellant's agent clearly declines the offer to discuss amendments and asks for the Council to proceed with the planning application. This is the appellant's prerogative. The Council's failure to go on and determine the planning application is unexplained and so the appellant's decision to lodge an appeal against non-determination is totally understandable.

6. However, the evidence before me indicates the Council would have refused planning permission if the appeal had not been lodged. As such, it is fair to conclude that an appeal would have been necessary to obtain planning permission for the development in any event. The appellant was advised of the Council's concerns prior to lodging the appeal and so the objections raised would have been expected. Therefore, even if the Council's failure to decide on the planning application is deemed as unreasonable behaviour, this has not led to unnecessary expense by the appellant in lodging the appeal.
7. For the above reasons, I conclude that the costs application fails to demonstrate unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG. Therefore, an award of costs is not justified.

Jonathan Edwards

INSPECTOR