



Costs Decision

Site visit made on 6 June 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2024

Costs application in relation to Appeal Ref: APP/Z4718/W/24/3337387 Land adjacent 146 Commercial Road, Skelmanthorpe HD8 9DS

- 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 T Sprott of Silverwood & GNS Property for a full award of costs against Kirklees Metropolitan 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 the erection of one detached property.

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. The applicant suggests various substantive and procedural matters, as identified in the PPG. These include the handling of the application and a failure to adhere to deadlines, the substance of the matter under appeal, preventing development which should clearly be permitted, providing inaccurate assertions about the proposal's impact, persisting in objections which an Inspector has previously indicated to be acceptable, and withdrawal of a reason for refusal.
3. If it is clear that the Council will fail to determine an application within the time limits, the applicant should be given a proper explanation. However, it appears to me that the planning officer expected to meet this target, including gaining agreement to conditions and in recommending the proposal for approval. On the deadline day the appellant was advised of the failure to determine the application.
4. I have sympathy with the applicant's frustrations over the Council's lack of early issue identification, particularly when expecting a positive outcome right up to the target deadline. Earlier involvement of senior officers would clearly have been beneficial, and the lack of such has not been explained. However, even had earlier discussion between the parties been achieved, based on the correspondence before me I find it highly likely that agreement would not have been reached as to a suitable design solution. Whilst there was an unreasonable lack of timeliness, the appeal was therefore not unnecessary as the application would still ultimately have been refused.
5. The Council showed unreasonable behaviour in its 2 day delay in submitting initial supporting appeal documents, with no questionnaire copied to the applicant. However, they have identified no wasted expense as a result.

6. Although I found in favour of the appeal, it involved a planning judgement in assessing harm to the character and appearance of the area, within a relatively constrained site. Although the previous Inspector clearly identified that the proposal before them would have no adverse effect on character, there is sufficient alteration to the parameters of the current proposal that the Council was not obliged to exactly follow that Inspector's reasoning. For instance, the reduced roof level massing led to the Council's position that the dwelling would have an untoward horizontal juxtaposition and emphasis, and there was previously no dormer.
7. I do note that as the previous Inspector found the proximity to the No. 146 boundary acceptable, the Council should have provided a more through reasoning in taking a contrary position for a proposal of the same height at the same distance. However, it is difficult to separate out this element from the Council's overall planning judgement in the context of the whole design. Overall, the Council clearly explained its reasoning, including with relation to relevant policies and analysis of the site's context. As such, I do not find unreasonable behaviour to be demonstrated, or to have delayed development which should clearly be permitted. For this reason, an appeal was a necessary outcome.
8. Based on the Council's emails, the appellant assumed that an overbearing impact to No. 1 Poplar Rise would be a proposed reason for refusal, and so addressed this in their initial appeal evidence. As the Council's appeal statement subsequently did not identify such a reason, the applicant contends this is a withdrawal demonstrating unreasonable behaviour. However, the Council was entitled to consider this impact as part of its application determination. Had a decision been issued, this reason may not have been included, especially as it was not suggested to be the most significant issue. In an appeal against non-determination, it is not unusual for the appellant to have to submit fairly expansive evidence.
9. I also note that the extent of the applicant's appeal documentation concerned solely with rebutting this is not significant, and primarily repeats that submitted with the application. Therefore overall, I find insufficient evidence that the applicant incurred unnecessary or wasted expense through solely attempting to refute this aspect of the appeal.
10. The proposed materials are identical to those approved on adjoining plots, and could be controlled by condition. It was therefore unreasonable for the Council to cite this as a design issue. However, the appellant's final comments response is simply a sentence reiterating this point. Again, I therefore find specific wasted expense not to have been incurred to the extent as to justify a costs award on this basis.
11. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

L N Hughes

INSPECTOR