



Costs Decision

Hearing Held on 26 March 2024

Site visit made on 26 March 2024

by Y Wright BSc (Hons) DipTP MSc DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 July 2024

Costs application in relation to Appeal Ref: APP/Z1510/W/23/3335393 Land adjacent to Weavers Park, off Bocking End, Braintree, Essex CM7 9AA

- 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 Weavers Park Limited for a full award of costs against Braintree District Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the erection of 22 residential apartments with associated access, parking and amenity area.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural matters

2. Both the costs application by Weavers Park Limited and the response by Braintree District Council were submitted in writing prior to the start of the hearing. No additional points were made orally at the hearing.
3. Within this decision I refer to Weavers Park Limited as the appellant and Braintree District Council as the Council.

Reasons

4. 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. Unreasonable behaviour in the context of an application for an award of costs against a local planning authority may be either procedural – relating to the process, or substantive – relating to the issues arising from the merits of the appeal. In this case the application for an award of costs relates to procedural matters.
5. In summary, the appellant submits that due to the length of time that the planning application was with the Council for determination, the limited feedback and responses received and the fact that no decision was issued within the statutory determination period and no reason provided, they had no option but to lodge an appeal on the grounds of non-determination in order to move the project forward.

6. In summary, the Council's response contends that due to the complexities and sensitivities of the site, acquiring pre-application advice would have been the most appropriate route for the appellant to follow prior to submission of the planning application, rather than expecting Officers to negotiate after its submission. The Council further states that they were in the process of determining the planning application when the appeal was submitted and there are fundamental issues with the appeal proposal.
7. The PPG advises at paragraph 048 that 'if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.'
8. The planning application was submitted to the Council on 12 June 2023. The available evidence includes email correspondence from the appellant asking for a Council response on when the planning application would be validated and the reasons for the delay. Except for an email from the Council dated 24 July 2024 stating that this matter had been raised with management no further Council email responses are before me. Putative reasons for refusal were issued by the Council as part of the appeal proceedings.
9. Whether or not the appellant should have followed the pre-application advice route is irrelevant. The complexities and sensitivities of the site are also beside the point. The appellant chose to submit a planning application without pre-application advice and the Council was required to validate it and then determine it within the statutory time limits.
10. I have no evidence before me to explain the reasons why validation took over 6 weeks, and no evidence to explain why the Council was unable to determine the planning application within the statutory time limits. Neither do I have any evidence that the Council requested an extended period for determination and agreed this in writing with the appellant. In this regard the PPG makes it clear that it is the Council's responsibility to make a request for any time extension. The PPG is also clear that the aim of the appeal costs regime includes encouraging 'local planning authorities to properly exercise their development management responsibilities' and 'not to add to development costs through avoidable delays'.
11. On the basis of the above, I find that the Council has behaved unreasonably.
12. Whilst it is clear that the Council's decision would have been a refusal, if this had been appropriately issued within the statutory time scales, the appellant would have been able to consider the reasons for refusal before deciding what course of action to take. This could have included consideration of several options such as submitting a further revised planning application which responded to reasonable local objections, putting forward a new project or deciding not to continue with any scheme. Instead, the Council's unreasonable behaviour has resulted in the appellant submitting an appeal in order to get a decision. This has generated unnecessary and wasted expense for the appellant.

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

Costs Order

14. 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 Braintree District Council shall pay to Weavers Park Limited, 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. The applicant is now invited to submit to Braintree District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Y Wright

INSPECTOR