



Costs Decision

Site visit made on 10 July 2024

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Costs application in relation to Appeal Ref: APP/U5360/W/24/3337996 240B Kingsland Road, London E2 8AX

- 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 Will Nustedt (NGE) for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of a single-storey conservatory at basement level without complying with a condition attached to planning permission Ref 2023/0690, dated 31 May 2023.
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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 another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant submitted their appeal against the failure of the Council to give notice of its decision within the appropriate period on the appeal application. It is common ground between the parties that at the time the appeal was made, more than four months had passed since the date by which the Council was obliged to have given notice of its decision.
4. The applicant lists a chronology of their attempts to contact the Council by email regarding the application between 28 August 2023 and 30 January 2024. Further attempts to contact the Council by telephone are also said to have been made during this time, but without success.
5. The officer dealing with the application is said to have been absent on sick leave on 13 October and 30/31 October, which is said to have created a backlog in processing applications which affected their ability to respond to emails. Workload pressures towards the end of 2023 are stated to be the reason why no responses were issued to the applicant's requests for an update in November.
6. On 4 January 2024, the officer contacted the applicant to apologise, and on 5 January advised them a decision would be issued the following week. However, again due to stated workload pressures, no such decision was issued and so the appeal was made.

7. I accept that Council officers are likely to have busy workloads, and that three days absence due to sick leave is likely to have intensified this to some extent for the officer dealing with this case.
8. However, the Council made no requests to the applicant for an extension of time to issue its decision on the proposal. Instead, on 30 August 2023, the Council are said to have advised the applicant their proposal was unacceptable and would be refused. The Council then suggested the application be withdrawn without the Council making a decision.
9. It is not clear who made this suggestion and I am unaware of any statutory basis for such an approach, including with regard to the Town and Country Planning (Development Management Procedure)(England) Order 2015. The applicant has paid a fee for their application to be determined by the Council and would reasonably expect the Council to provide a decision within the prescribed period.
10. Had the application been submitted after 6 December 2023, the applicant's fee would have been refunded as a result of the Government's Planning Guarantee¹. However this application pre-dates 6 December 2023, and so it does not apply in this case.
11. The applicant has provided no substantive evidence of their attempts to contact the Council by email. However, this matter is not disputed by the Council. No contact from the Council for over four months is highly unreasonable behaviour and, in my view, it is unacceptable. Irrespective of any workload pressures that existed, this situation reflects poorly on the Council.
12. However, the Council's appeal statement confirms that had it determined the application it would have refused permission. Consequently, whilst the Council's behaviour has been highly unreasonable, it is not evident the applicant has incurred unnecessary or wasted expense in the appeal process. Had the Council issued a decision, the applicant would still have needed to make an appeal had they wished to proceed with the proposal.
13. For these reasons, and despite the unacceptably poor behaviour of the Council, an award of costs is not justified in this case.

Andrew Parkin

INSPECTOR

¹ PPG Fees for Planning Applications - Paragraph: 042 Reference ID: 22-042-20141017 Revision date: 06 12 2023