

Costs Decision

Site visit made on 12 July 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st August 2024

Costs application in relation to Appeal Ref: APP/C1950/W/23/3328353 30 Barleycroft Road, Welwyn Garden City, Hertfordshire AL8 6JU

- 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 Jon Barnett for a full award of costs against Welwyn Hatfield 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 planning permission for the erection of a part single and part two-storey rear extension, roof extension and alterations to openings.
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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.
3. The applicant's case is that the Council has failed to determine two applications during the statutory determination period despite full cooperation by the applicant. The applicant contends that the Council led them to understand that permission would be granted for the appeal proposal, only for it to unexpectedly raise a late and unexplained concern with the proposed development. Consequently, the applicant opted to lodge the appeal.
4. The PPG¹ sets out 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. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
5. On the evidence before me, the first written communication between the Council and the applicant was shortly before the statutory time period for a decision was due to expire. This was an email from the Council seeking a

¹ Paragraph: 048 Reference ID: 16-048-20140306

revised drawing to resolve an incorrect annotation and seeking agreement to an extension of time for a decision to be issued.

6. From that point onwards there followed a period of cooperation and communication between the main parties. This included various emails, a site meeting, the submission of amended drawings and the agreement of an extension of time. Nonetheless, I have no evidence before me to show that the Council gave the applicant a proper explanation for not reaching a decision on the planning application within the relevant time limit. Therefore, the Council failed to accord with the behaviour expected of it by the PPG.
7. The Council Officer advised the applicant that a recommendation to grant planning permission would be made to senior officers. However, this was followed up by the Council raising concerns expressed to it by the Estates Manager, and then by an email to the applicant dated 17 August 2023, explaining that the proposed development could not be supported.
8. The Council's actions in this regard will no doubt have come as a disappointment to the applicant. Nonetheless, the Council's putative reasons for refusal in its statement of case provide a sufficiently detailed analysis justifying why, on the merits of the case, it found the appeal proposal's effects to be unacceptable. Its analysis had regard to its statutory duty², national and local planning policies, and material considerations, including relevant appeal decisions.
9. Therefore, in accordance with the PPG, the Council has clearly explained through the appeal process why permission would not have been granted had the application been determined within the relevant period. Given that I have dismissed the appeal and refused planning permission, this is not a case where a development that should clearly have been permitted has been delayed.
10. Even if the Council had made its decision on the planning application within the relevant time period, I have no reason to find, on the evidence before me, that it would not have refused planning permission and so the appeal, and the expense associated with it, would still have been necessary. Furthermore, I have no substantive evidence that the applicant incurred any additional expense as a result of the Council's failure to determine the application earlier and within the statutory time period.
11. Consequently, I conclude that the Council's behaviour has not resulted in unnecessary or wasted expense. Therefore, an award of costs is not warranted.

G Sylvester

INSPECTOR

² Section 72(1) of the planning (Listed Building and Conservation Areas) Act 1990