
Costs Decision

Site visit made on 25 October 2024

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2024

**Costs application in relation to appeal: APP/W4325/W/24/3343367
Site of former carpark at the corner of Argyle Street and Bridge Street,
Birkenhead CH41 1AH**

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr J Hennessy for Birkenhead Commercial Ltd for a full award of costs against Wirral Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for four light industrial units and site works.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance 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 suggests that the council delayed the application by invalidating it and sending the email to the wrong address. A further invalidation letter was issued that included details that the applicant suggests should have been included in the first letter. Amendments were then sought by the case officer after the expiry date of the application. A timely decision was not then made after the applicant advised the council that amendments would not be made. The decision was not issued until after the case officer was informed that an appeal against non-determination was likely. The applicant suggests that the single reason for refusal was purely subjective and without due consideration for all of the planning merits.
4. Although not a matter for which costs could be awarded in these particular circumstances, I am not persuaded by the information submitted, that the council acted unreasonably with regard to the matters raised relating to the validation of the application.
5. The applicant should be able to expect a decision within the prescribed period and the council should explain their reasons for not reaching a decision within the relevant time limit. The local planning authority may be at risk of an award of costs, if it is concluded 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.

6. Although there was a delay, it is clear that the council were not in a position to approve the application due to their concerns with regard to the character and appearance of the area. The council sought improvements to resolve these concerns. Although it appears that some compromises were made by the applicant, these were not sufficient to overcome the council's concerns. A refusal was therefore inevitable. Although the applicant has concerns about the suggestions made to improve the proposal, it appears that the council were positively seeking to assist. The council's behaviour in this regard was not unreasonable.
7. Any delays in reaching a decision following the final impasse were unfortunate. However, the applicant was entitled, at any time, to appeal against non-determination and was clearly aware of this. Given that the applicant was not prepared to alter the proposal in a way that would gain support from the council, an appeal was inevitable. Whilst it is suggested that the planning merits were not fully considered, the officer report is comprehensive and balanced.
8. Aside from the registration issues, it appears that many of the delays in the decision resulted from the council seeking improvements to the scheme. They gave the applicant every opportunity to move towards a positive outcome. The council were entitled to conclude that the proposal represented poor design. I therefore find no reason to consider that the council behaved unreasonably. The costs of the appeal were inevitable in any event, given that the applicant was not willing to improve the proposal.
9. As unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated, an award of costs is not justified.

Peter Eggleton

INSPECTOR