



Costs Decision

Site visit made on 21 January 2025

by A Veevers BA(Hons) PGDip(BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Costs application in relation to Appeal Ref: APP/X5990/W/24/3351308

Flat B, 12 Rex Place, City of Westminster, London W1K 2HB

- 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 Rashid Al Mannai for a full award of costs against City of Westminster 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 reinstatement of pavement and installation of pavement lights.
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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 is seeking a full award of costs on grounds that the Council behaved unreasonably by failing to determine the application within the prescribed timescale. It is also argued was no reason why the proposal should not have been approved by the Council. Particularly since planning permission has previously been granted to extend the pavement in front of the appeal property and install a set of pavement lights¹ (the 2023 permission) and other similar pavement lights are evident along Rex Place.
4. The PPG is clear in setting out the circumstances in which a local planning authority could be vulnerable to an award of costs against it. It also advises that in non-determination cases the Council may be at risk of an award of costs if there were no substantive reasons to justify delaying determination and better communication with the applicant would have enabled the appeal to be avoided altogether. The PPG states that if it is clear to a local planning authority that it will fail to determine an application within time limits it should give the applicant a proper explanation. However, I also note that the PPG recommends an applicant engages with the Council before proceeding to appeal against non-determination.
5. Nevertheless, the Council have not provided an explanation why the processing of the application took almost 8 months from the date the planning application was validated in January 2024 until the appeal was submitted in September 2024.

¹ LPA Ref: 23/07216/FULL

Neither have I any evidence before me that an agreement to an extension of time was sought. I note comments on the proposed development from the Council's highway department were not provided until August 2024. Nonetheless, it should have been evident to the Council that it would not be possible to determine the application within the prescribed timescales and this should have been communicated to the applicant.

6. The Council's appeal submission does not explain the reasons for not reaching a decision on the application as suggested by the PPG. It has, however, clearly set out within its Statement of Case the reasoning why, had it determined the application, it would have resolved to refuse the application. Nevertheless, I find that the Council did not act in a communicative or timely manner as advised by the PPG².
7. Therefore, I find that the Council's handling of the planning application amounts to unreasonable behaviour. However, for a costs application to be successful unreasonable behaviour must also result in unnecessary costs being incurred by the successful party.
8. It is clear, in the Council's rebuttal evidence that when processing the 2023 permission, which was originally for two sets of pavement lights, the applicant was advised to remove the second set of pavement lights from the proposal. The reasons why were explained in email correspondence between the Council and the applicant. The email correspondence also explained why two sets of pavement lights in front of 18 Rex Place were found to be acceptable to the Council.
9. The applicant therefore submitted the appeal proposal in the full knowledge of the issues and concerns of the Council in relation to the second pavement light. The Council has clearly set out its reasoning behind the putative reason for refusal, which is consistent with the advice provided in relation to the 2023 permission, in response to which the appellant has had the opportunity to respond.
10. My decision on the planning appeal sets out my reasoning as to why I agree with the conclusion reached by the Council. Those reasons also set out why I consider that the appeal could not have been avoided and that the Council did not therefore delay an otherwise acceptable form of development. There was not, as a consequence, unnecessary or wasted expense as the Council's case was well-founded and justified.

Conclusion

11. Notwithstanding that the Council did behave unreasonably, in terms of its failure to communicate and to determine the application in a timely manner, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal, as described in the PPG, has not been robustly demonstrated.
12. Therefore, an award of costs is not justified.

A Veevers

INSPECTOR

² Paragraph: 048 Reference ID: 16-048-20140306