

Costs Decision

Site visit made on 17 February 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 25th February 2025

Costs application by Mrs Samiye Moustaffa

Appeal ref: APP/T3725/X/23/3332822

10 Meadow Close, Lillington, Leamington Spa CV32 7AS

- The application was made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, and the Local Government Act 1972 Section 250(5).
- The application was made by Mrs Samiye Moustaffa for an award of costs against Warwick District Council.
- The appeal was made under section 195 of the Town and Country Planning Act 1990, (the Act), as amended by the Planning and Compensation Act 1991 against the refusal of Warwick District Council grant a certificate of lawful use or development.

Decision: The application for an award of costs is not allowed.

Application - submissions made by Mrs Samiye Moustaffa

1. The application for costs was made due to the failure of the Council to work in a positive, proactive and reasonable manner by constantly ignoring correspondence and refusing fair consideration of submitted proposals. The resultant protracted determination period of over 2 years and endless chasing of planning officers had incurred unnecessary expense, arising from the required additional works of the Appellant's agents during the application process. It ultimately required an appeal to produce a reasonable appraisal of the proposal.

Submissions made by Warwick District Council

2. The Council said the appeal was not against non-determination. If the Appellant, Mrs Moustaffa, considered that the application should have been decided more quickly, the appropriate route to seek a remedy was to the Council's formal complaints process and, if necessary, application to the Local Government Ombudsman.
3. Although the initial delays encountered were regrettable, the Council considered that they had not acted unreasonably. Due to the unwillingness of the Appellant to amend the scheme, the appeal became unavoidable.

Inspector's conclusions

4. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process. Parties in planning appeals normally meet their own expenses. Costs do not, as a rule, follow the result. However, where a party has – (1) behaved unreasonably and – (2) this has directly caused another party to incur unnecessary or wasted expense, they may be subject to an award of costs.
 5. The power to award costs is limited to those necessarily and reasonably incurred in the appeal process. Expense incurred at application stage, or any indirect expenses, cannot be recovered by an award of costs in any event.
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6. Costs applications may relate to events before the appeal or other proceeding was brought, but costs unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from an alleged delay in obtaining planning permission - *Para: 032 Reference ID: 16-032-20140306 Planning Practice Guidance: Appeals (PPG)*.
7. Where an applicant has a complaint against a local planning authority's handling of a planning application, they have the remedy of exercising their statutory right of appeal against a refusal or failure to determine, and can apply for an award of costs as part of the appeal statutory process. The Council had accepted that there was an unreasonable delay in their determination of LDC application W/21/1492, the subject of the subsequent appeal to the Planning Inspectorate, taking 10 months rather than the statutory timescale of 8 weeks, much of the time being taken between the submission of the application and the Council validating it prior to making a decision. But that pre-dated the appeal process. It was not a matter that arose as a result of actions by the Council in their response to the appeal.
8. Unreasonable behaviour during the planning application process can be taken into account, but that might only have applied here had the Council's reasons for the refusal to issue a certificate of lawfulness been hopelessly inadequate. However, the Council's case was pertinent and suitably considered.
9. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against Warwick District Council is not justified.

COSTS ORDER

10. No order as to costs is made.

John Whalley

INSPECTOR