



Costs Decision

Site visit made on 9 October 2018

by **E Symmons BSc (Hons) MSc MArborA**

an Inspector appointed by the Secretary of State

Decision date: 06 December 2018

Costs application in relation to Appeal Ref: APP/H0738/W/18/3205467 3 Railway Cottages, Urlay Nook Road, Eaglescliffe TS16 0JL.

- 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 Mr Marcus Emadi for a full award of costs against Stockton-on-Tees Borough 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 a two storey extension to the side and rear with conversion to two apartments.
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Decision

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

Procedural Matters

2. On 14 February 2018 Mr Marcus Emadi submitted an application form for the above development to the Council. On 24 February 2018 a second application was made showing Mrs Anna Craig as the applicant with an extended description of the proposals. There is disagreement between the appellant and the Council as to whether this second application form was accepted. The submissions associated with this costs application are also in name of Anna Craig. However, as Mr Emadi's status as both initial applicant, and the appellant in the associated appeal has been confirmed, it is appropriate that this costs application go forward in his name.

Reasons

3. Irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. This costs application accompanies an appeal against the Council's failure to determine the application within the prescribed period. The applicant considers that had the application been determined planning permission would have been granted and this appeal would have been unnecessary. Three issues are raised which I will discuss in turn:
 - No extensions of time (EOTs) were agreed.
 - Unreasonable requests for amendments were made following contradictory advice.

- There was failure to determine an application which should have been granted due to its accordance with relevant policy.

Extensions of time

5. Correspondence submitted includes references to EOTs. During the time between expiry of the application deadline and the appeal being submitted, correspondence between the parties sought resolution of various objections the Council had relating to design of the proposed extension. Although failure to agree an EOT is contrary to paragraph 3 of PPG 'Determining Planning Applications', I do not consider this amounts to unreasonable behaviour, or that it led to a protracted process, as the Council was actively trying to resolve issues. I therefore find that this first issue is not substantiated.

Unreasonable requests for amendments

6. On 15 May 2018 the Council set out reasons why the application was unacceptable. Various amendments were requested and although some issues appeared to be resolved, the loss of outlook to 4 Railway Cottages (no 4) and latterly, the loss of privacy to no 4, were not. In the ensuing period the Council did indicate that some of its other concerns could be resolved. This included reducing the projection length of the rear extension to lessen overlooking of Flounders House, a front elevation setback to reduce the prominence of the side extension and acceptance of suggested obscure glazing to the side window to resolve the issue of overlooking to no 4. Subsequently, a set-in to the side elevation was suggested by the applicant to resolve outlook to no 4, but the suitability of this solution was not confirmed by the Council. The overlooking on of Flounders House and the overbearing effect on no 2, were not resolved.
7. In this case I have noted that the advice of one Council officer was not consistent with the advice of another. Whilst this is not helpful to the applicant, advice is a matter of an individual officer's judgement, and in any case it appears that at no point were all the Council's concerns addressed. On 14 June the applicant asked for a summary of changes which would allow the application to be acceptable. The Council indicated that at this time the scheme was not acceptable without major redesign.
8. Costs associated with amendments as part of the planning process are not within the scope of a costs application. The costs application before me must consider if delays in response and unclear advice led to the subsequent appeal. During their discussions the Council failed to, at the outset, comprehensively set out all of its concerns. However, loss of outlook to no 2 and no 4, potential privacy issues for no 2, no 4 and Flounders House, remained ongoing issues which would have made the scheme unacceptable. These were stated within the submitted correspondence and I find that a claim for costs is unsubstantiated on these grounds.

The development would have been approved

9. The third issue raised by the applicant quotes paragraph 49 of the 'Appeals' PPG: '*Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:*

- *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations’.*
10. The applicant states that the appeal was unnecessary as the proposal complied with the development plan and all issues raised by the Council had been addressed. The Council have confirmed that had they determined the application, it would have been refused it as it failed to comply with the development plan. As can be seen from my decision on the appeal I have concurred with the Council. As such, I cannot agree that the Council has acted unreasonably in this case and had the planning application been determined at any point during the proceedings, it would have been refused. This refusal could have led to an appeal had the applicant decided this was the most appropriate course of action therefore, no additional cost has been incurred.
11. Taking into account the matters raised, I find that unreasonable behaviour resulting in unnecessary or wasted expense within the appeal process, has not been demonstrated. The application for costs is refused.

E Symmons

INSPECTOR