The Planning Inspectorate

Costs Decision

Site visit made on 8 January 2016

by J Dowling BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 March, 2016

Costs application in relation to Appeal Ref: APP/X5210/W/15/3135102
10-14 Belmont Street, London NW1 8HH

- 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 Warmhaze Ltd for a full award of costs against the Council of the London Borough of Camden.
- The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.

Decision

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

Reasons

2. National Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has acted unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process. Claims can be procedural – relating to process; or substantive – relating to the issues arising from the merits of the appeal.

3. The Guidance states that costs may be awarded in circumstances including 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.

4. The appellant has submitted a claim on both a procedural basis – in that determination of the application was unreasonably delayed and a substantive basis – the application should have been permitted as the conditions that they applied to remove did not meet the test for conditions as set out in paragraph 206 of the National Planning Policy Framework (the Framework).

5. The application was submitted on the 19 May 2015 and was due for determination on the 14 July 2015. The appellant states that contrary to the Guidance, the Council failed to provide an explanation as to why they had not determined the application within the statutory time limits.

6. The Council in their response to the appellants cost application have not provided an explanation as to why they failed to determine the application within the statutory time limits simply stating that it was not possible to determine the application within the '8 week time frame'. Whilst it is noted that they have sought to maintain an open dialogue with the applicant and provide regular updates I consider that the council has acted unreasonably in

not determining the application either within the statutory timeframe or providing an explanation as to why they had not.

7. As laid out in my Decision I have concluded that the original application was for the redevelopment of the site with three dwelling houses and therefore the in-principle imposition of conditions 4, 5, 6, 8, 9, 10, 11, 12 and 13 at the time of the original planning permission was granted was reasonable. When the Council granted planning permission a detailed reason citing the relevant development polices was given for each condition. Furthermore, a comprehensive appeal statement supported by relevant policies was submitted outlining why the Council would have refused permission had an appeal not be submitted.

8. As outlined in my Decision the Written Ministerial Statement (WMS) of March 2015 included a transition period for planning permissions that were approved before the new national technical standards came in to effect on the 1 October 2015. Therefore the Council were right to impose conditions 5, 11, 12 and 13 when they granted planning permission.

9. Furthermore, whilst all parties now agree that condition 10 is no longer required at the time that planning permission was granted the Highways Works Agreement hadn't been signed and therefore to secure the works the Council were right to impose the Condition.

10. Condition 8 is therefore the only condition where I have found that it would not meet the test for conditions and should not have been imposed when the original planning permission was granted.

11. The Council have made it clear from their statement that if they had been allowed to determine the application they would have agreed to the removal of conditions 8 and 10; they would have replaced condition 5 with a new condition that reflected the changes brought in by the WMS but they considered that the remaining conditions 4, 6, 9, 11, 12 and 13 continued to be necessary; relevant to planning and to the development permitted; enforceable; precise and reasonable in accordance with the requirements of the Framework and therefore would not have granted planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

12. Therefore whilst I agree that the Council have acted unreasonably in not determining the application within the statutory period I do not consider that this unreasonable behaviour has caused the appellant to incur unnecessary or wasted expense in the appeals process as it is clear that had the Council determined the application on time planning permission would have been refused. Thus I consider that an appeal would have been likely in any event.

13. I conclude therefore that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has not been demonstrated. Accordingly, the application for costs fails.

Jo Dowling

INSPECTOR