
Costs Decision

Site visit made on 28 February 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 22nd March 2017

Costs application in relation to Appeal Ref: APP/P5870/W/16/3161774 106A Stafford Road, Wallington SM6 9AY

- 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 Jonathan Hagar (c/o Pearl & Coutts) for a full award of costs against the Council of the London Borough of Sutton.
 - The appeal was against the refusal of planning permission for demolition of buildings and erection of a residential development comprising three 3 bedroomed 2 storey houses and a separate two storey building to provide three 1 bedroomed and three 2 bedroomed self-contained flats together with car parking, cycle store, refuse and recycling facilities and associated landscaping.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only 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. An application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
 3. In procedural terms, the delay in providing information is an example of unreasonable behaviour within the PPG. Whilst this may well have caused some inconvenience it has not been demonstrated that this resulted in any unnecessary or wasted expense. I cannot be certain that the indication that a statement of case is attached on the appeal questionnaire does not simply refer to the inclusion of the officer report instead of a full statement. Reliance on a delegated or committee report is not uncommon and in my view, neither of these amounts to unreasonable behaviour.
 4. One example set out within the PPG that might give rise to a substantive award of costs against a Local Planning Authority includes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis. The Council's reason for refusal set out in the decision notice is complete, specific and relevant to the application. It also clearly states the policies of the development plan that the proposal would conflict with, which are in accordance with the most up-to-date national policy.
 5. In terms of outlook and privacy, given the substance of the Council's concerns I did not find the Council's evidence analysis of such effects to be vague,
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- generalised or contain inaccurate assertions. Whilst I appreciate that the applicant clearly feels aggrieved by the decision of the Council and does not agree with the Council's consideration of these matters, they necessarily involve matters of planning judgement and a degree of subjectivity.
6. The Brise Soleil was clearly not considered by the Council because they were of the view that such an amendment would have required further consultation as it would have resulted in a material change to the appearance of the building. This is an entirely reasonable stance to take and does not amount to unreasonable behaviour.
 7. I also do not consider that this is something which, if conditioned, would have prevented harmful overlooking and enabled the proposed development to go ahead given the Council's objections in terms of outlook. As such, the disagreement between the parties insofar as these issues are concerned could only have been resolved at appeal. The Council were not unreasonable in coming to their conclusions in these respects and given my decision, they have not prevented or delayed development which should clearly have been permitted. Subsequent checking of their case insofar as these aspects are concerned would not have altered the outcome or resulted in the appeal being withdrawn.
 8. However, in terms of light it is clear that the applicant attempted to address these issues by providing further technical information prior to the determination of the application. There is no mention of this additional work within the delegated officer report and I find the consideration of light within it to be vague and unsupported by any objective analysis. In my view, and in light of the further information submitted this amounted to unreasonable behaviour.
 9. Nonetheless, this work was undertaken by the applicant during the application process and on the evidence before me, was submitted to the Council prior to their formal decision. I am not persuaded that the statement of case accompanying the appeal does little more than repeat the findings of this work, including providing extracts of a sectional drawing that accompanied the application. Furthermore, the application does not demonstrate what unnecessary or wasted expense occurred as a result of such behaviour.
 10. For these reasons, I do not find that the applicant was put to unnecessary or wasted expense in the appeal process, despite the Council's unreasonable behaviour in failing to adhere to deadlines and in terms of their consideration and conclusions on daylight and sunlight. For this reason an award of costs is not justified.

Richard Aston

INSPECTOR