
Costs Decision

Site visit made on 14 March 2017

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 03 April 2017

Costs application in relation to Appeal Ref: APP/K5600/W/16/3164566 Flat 3 and Flat 8, 19 Palace Gate, London W8 5LS

- 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 Mrs Caroline Hansberry for an award of costs against The Council of The Royal Borough of Kensington & Chelsea.
 - The appeal was against the refusal of planning permission for the demolition of part of rear elevation of common circulation space at upper first floor level of 19 Palace Gate. Part of flat roof at upper ground floor level over Flat 8. Removal of existing window and door casements at the front and rear of Flat 3. Removal of part of boundary railings at upper first floor level between no 19 and no 17. Proposed new extension study room at upper first floor level accessed from circulation space. New roof light to rear flat roof of Flat 8. Install new windows and doors to match existing at front and rear of Flat 3, 19 Palace Gate.
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Decision

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

Reasons

2. 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 PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters such as 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. Other substantive matters include failure to produce evidence to substantiate a reason for refusal on the appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 4. The application for costs relates to two substantive matters. Firstly, the appellant contends that the Council has failed to demonstrate harm within the reason for refusal. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. It clearly identifies what the Council considers to be harmful and states Policy CL5 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015, to which the proposal would be in conflict. The Council's evidence includes a statement of case which seeks to substantiate the reason for refusal. Consequently, I
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- cannot conclude that, in relation to the first matter, the Council behaved unreasonably or caused unnecessary or wasted expense in the appeal process as a result.
5. With respect to the second matter, the application was refused against officer advice and the recommendation of the Council's Officers is noted. The appellant contends that the Council has acted unreasonably on the basis that Council Officers recommended that planning permission be granted, but Council Members took a different course of action which was based upon an inappropriate assessment of the submitted daylight and sunlight assessment.
 6. From the submitted evidence, the analysis undertaken within the daylight and sunlight assessment is based on the methods contained within the Building Research Establishment (BRE) Guidelines. It concludes that, with the proposal in-situ, all windows and rooms serving habitable dwellings around the appeal site would comply with BRE Guidelines in respect of vertical sky component and annual probable sunlight hours. Despite this, I concur with the Council that the labelling of the 3D model drawings could have been more detailed and the provision of additional plans would have been useful.
 7. However, in exercising their judgement on this matter, the Council adopted a precautionary approach in relation to the assessment. The weight to be given to any particular matter is a matter of judgement for the decision maker. Even though I reached a different conclusion on the planning merits of the case, taking into account all of the circumstances, I am satisfied that the Council duly assessed the submitted evidence in their consideration of the application. Furthermore, Council Members are entitled to come to a decision against the officer's recommendation.
 8. As such, I have found that the Council demonstrated harm in the reason for refusal and had reasonable concerns about the impacts of the proposal based on the evidence submitted. That they concluded differently to my decision on this matter does not amount to unreasonable behaviour on their part, and I am satisfied that there has been no unreasonable behaviour resulting in unnecessary expense.

Conclusion

9. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and so the application for an award of costs is refused.

Helen Cassini

INSPECTOR