

Costs Decision

Site visit made on 28 February 2017

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 22 May 2017

Costs application in relation to Appeal Ref: APP/L5810/W/16/3163450 St Michaels Church Hall, Elm Bank Gardens, Barnes, London SW13 0NX

- 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 the Church Wardens and Parochial Church Council of St Michael and All Angels Church, Barnes for a full award of costs against the Council of the London Borough of Richmond upon Thames.
 - The appeal was against the failure to give notice within the prescribed period of a decision on an application for planning permission for demolition of existing hall; erection of replacement hall and one x detached dwelling, parking and associated works.
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Decision

1. The application for the award of costs is allowed in part in the terms set out below.

Reasons

2. National Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeals process. The application needs to clearly demonstrate that this is the case.
3. The applicants are seeking a full award of costs in relation to both the procedural and substantive nature of the Council's behaviour.

Procedural Matters

4. PPG advises that costs cannot be claimed for the period during the determination of the planning application but they may relate to events before the appeal. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.
 5. The advice in the Procedural Guide – Planning Appeals is that the local planning authority should have constructive discussions with the applicant and if it has concerns it should give the applicant the opportunity to amend the application before it is determined. The applicants entered into pre-application discussions with the Council which were constructive in establishing an officer view which led to the submission of the planning application. Following the submission of the application the Council failed to reach a decision within the statutory period and had failed to do so almost six months beyond the statutory period for the
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- determination of the application, resulting in the applicant lodging an appeal. The applicant claimed that the Council's behaviour was unreasonable and therefore necessitated the appeal.
6. The Council's failure to determine the application so long after its submission does not in itself amount to unreasonable behaviour even in the context of generally supportive extensive pre-application discussions. In addition, the Council did not request any major changes to the scheme which could have delayed determination of the application but the change of case officer contributed to the delay.
 7. However, the new case officer did not explain to the applicant the reasons for the ongoing delay or the different approach officers were then adopting to the scheme in contrast to those of the previous case officer resulting in the application being recommended for refusal. Officers concluded that the scheme was so fundamentally unacceptable in design terms that limited modifications would not overcome conflicts with the development plan and associated guidance and that only a wholesale re-design would be acceptable. Whether or not these issues were new as suggested by the applicants it was not unreasonable for the scheme to be presented to Committee with a recommendation for refusal without first notifying the applicant.
 8. The applicants argued that the application was submitted on the basis that the officers' early advice in relation to parking indicated that whilst the scheme did not comply with guidance it was not considered by officers to be a critical issue. As the applicants acknowledged, the views of officers are not binding and therefore the fact that the matter was given different weight in the Committee report does not indicate unreasonable behaviour.
 9. With regard to the Council's putative reason for refusal in relation to affordable housing considerable further evidence was provided in the Council's Cost Application Rebuttal which was not provided in its original statement in response to the appellant's case. I consider that the late introduction of such extensive information was unreasonable. However, noting the applicants' statement that they would not comment on the new evidence relating to the affordable housing payment, it has not been demonstrated that the applicant incurred additional costs in responding to this further information.
 10. On this basis, I find that in procedural terms the actions of the Council did not result in the applicants incurring unnecessary or wasted expense in the appeal process. The Committee report recommending refusal of the application was published before the applicant lodged the appeal but given the recommendation and the decision of the Committee, even if the appeal had been lodged earlier there is no evidence that unnecessary or wasted expense was incurred in the appeal process.

Substantive Matters

11. The applicants argued that the new case officer reached a different conclusion from the previous case officer without objective analysis and therefore the Council's behaviour was unreasonable. As a number of issues were questions of professional judgement and subjectivity, I do not find that the behaviour of the Council officers in coming to a final recommendation which was at variance with initial views was unreasonable.

12. With regard to the additional reasons for refusal contained in the Addendum Report to Committee I accept that the applicant had previously indicated a willingness to enter into a legal agreement but the inclusion of this matter as a reason for refusal in the Addendum Report, whilst late in the process, was not unreasonable. Nor do I find that the Council failed to substantiate its case in relation to the need for a commuted affordable housing sum in its statement, whilst acknowledging that this was added to in its costs rebuttal. Moreover, the matters addressed in the putative reasons for refusal were all matters which could not have been addressed through planning conditions.
13. However I find that the putative reason for refusal relating to noise and disturbance failed to accurately address matters relating to both existing and proposed access points and the existing and proposed operation of the hall. Consequently there was a failure by the Council to substantiate their reason taking account of facts, site context and specific circumstances. In this respect the Council acted unreasonably leading to wasted expense being incurred.
14. It has been demonstrated that there was unreasonable behaviour resulting in unnecessary expense as described in PPG by the Council in respect of their failure to provide relevant evidence to support its putative reason for refusal in respect of noise and disturbance. As a result, for the reasons given, a partial award of costs on this matter is justified.

Costs Order

15. In exercise of the powers under section 250 (5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Richmond upon Thames shall pay to the Church Wardens and Parochial Church Council of St Michael and All Angels Church, Barnes the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the putative reason for refusal in respect of noise and disturbance, such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicants are now invited to submit to that Council of the London Borough of Richmond upon Thames Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Cost Office is enclosed.

Kevin Gleeson

INSPECTOR