

Costs Decision

Hearing held on 16 May 2017

Site visit made on 16 May 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 2 June 2017

Costs application in relation to Appeal Ref: APP/A5840/W/16/3165639 12-14 Marshalsea Road, London SE1 1HL

- 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 I Ogilvie of Cyrus Homes Limited for a partial award of costs against the Council of the London Borough of Southwark.
 - The hearing was in connection with an appeal against the refusal of planning permission for "Extension of the existing mansard roof to create a full storey to match the building below and the erection of a new mansard roof above, together with the change of use of part of the ground floor accommodation at no. 14 from an office (Use Class B1(a)) to a café (Use Class A1/A3) and the change of use of the first, second, third, fourth and fifth floors of no.14 from offices (Use Class B1(a)) to 5 two bedroom flats and the use of the new roof level accommodation as 2 one bedroom flats; together with refuse and cycle storage at ground floor level".
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Decision

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

The submissions for Mr I Ogilvie

2. The Council introduced evidence during the Hearing which it relied upon. The evidence could and should have been produced previously. The late introduction of the evidence led to a delay and was unreasonable. This resulted in additional consultants' time in reviewing the late documentation and formulating a response, in addition to the subsequent discussion between the parties. The Council has behaved unreasonably and this has caused unnecessary and wasted expense.

The response by the Council of the London Borough of Southwark

3. The Council acknowledges that the evidence was submitted at the Hearing and was not in the Statement of Case. However, the Council considers the evidence to be a material consideration as it sets out the need for employment space in the Borough. The Council reiterates that the Report in question is freely available on its website and forms part of the basis of the Council's policy to protect B1 office space.
 4. The Council requests that any costs award be limited to any additional expenditure in relation to the relevant consultant's fee.
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Reasons

5. 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. The PPG makes it clear that a local planning authority is at risk of an award of costs as a result of introducing fresh and substantial evidence at a late stage necessitating an adjournment.
6. During the Hearing the Council referred to its Employment Land Study.¹ This document had not been referenced earlier by the Council. The Council agreed that the document was available when the Officer Report and the Statement of Case was prepared. The Council stated that the Study is on its website, however, it is not reasonable to expect the other party to look for evidence in the event that the Council may introduce it later in the proceedings. Consequently, the applicant had not had the opportunity to review the document and was not in a position to address its findings.
7. The Council indicated that it would set the document aside and not use the evidence during the Hearing. However, it appeared to be highly relevant to the appeal and to disregard the Employment Land Study ran the risk of omitting a key part of the Council's case. Therefore, the Hearing was adjourned to enable the applicant and his advisers, in particular the planning agent and surveyor, to consider the late evidence. The adjournment and subsequent discussion extended the Hearing by approximately 45 minutes. Consequently, the applicant's advisers were required to be present for longer than they would have been had the adjournment not been necessary.
8. I have found that the Council behaved unreasonably in introducing late evidence during the Hearing, and this caused the applicant to incur unnecessary expense in considering and responding to that evidence.
9. I therefore conclude that a partial award of costs to cover the expense incurred by the applicant in responding to the late submission of the Employment Land Study is justified.

Costs Order

10. 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 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Southwark shall pay to Mr I Ogilvie, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred by relevant persons in responding to the late evidence submitted during the Hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Debbie Moore

Inspector

¹ Southwark Employment Land Study, Part 1 – Final Report, January 2016