
Costs Decision

Site visit made on 9 May 2017

by S Jones MA DipLP

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

Decision date: 18th August 2017

Costs application in relation to Appeal Ref: APP/K5600/W/17/3168601 40 Lexham Gardens, London W8 5JE

- 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 John Williams for a full award of costs against the Council of The Royal Borough of Kensington and Chelsea.
 - The appeal was against the refusal of planning permission for demolition of single storey garage and redevelopment with new lower ground floor (basement) level to provide 1 bedroom flat at basement, ground and ground floor mezzanine levels.
-

Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of outcome, costs may be awarded against a party who has behaved unreasonably, and where as a consequence another party has incurred unnecessary or wasted expense in the appeal process.
3. This application is made on the basis that the Council acted unreasonably in relation to both of the reasons for refusal. I shall therefore consider each in turn.

Character and Appearance

4. I am unable to agree that the Council have acted unreasonably in dealing with this matter or failed to substantiate or support their policy objections on the grounds of character and appearance because it is clear from the officer's report and the Decision Notice that the application was subjected to proper scrutiny by the local planning authority. A decision was reached to refuse planning permission, which it substantiated with reference to the character and appearance of the area and the conservation area, and the relevant policies.
5. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expenditure has not been demonstrated in relation to the matter of character and appearance.

Car Free Development

6. The Council's reasons for refusal included concerns about securing traffic free development by way of a s106. The applicant states that a Condition should have been imposed to resolve that issue instead, particularly since the previous
-

Inspector's decision referred to a Condition and otherwise found no objection to this part of the proposed development.

7. The PPG makes it clear that a local planning authority is at risk of an award of costs if it persists in objections to a scheme which an Inspector has previously indicated to be acceptable.
8. The Council's concerns about traffic were reasonable because there is a Borough wide problem which it was appropriate for them to consider in determining the application. However I find that following on from the previous Inspectors findings, it was unreasonable for this matter not to have been dealt with by Condition and the Council have not provided any convincing explanation why a Condition was not used. Had a Condition been imposed, this matter would not have constituted a reason for refusal, and would not have gone on to comprise part of this subsequent appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified so far as the cost of the appeal in respect of car free development is concerned.

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 on its behalf, IT IS HEREBY ORDERED that the Council of the Royal Borough of Kensington and Chelsea shall pay to the applicant Mr John Williams the costs of the appeal proceedings described in the heading of this award limited to those costs incurred in dealing with the appeal in respect of car free development.
11. The applicant is now invited to submit to the Council of the Royal Borough of Kensington and Chelsea, to whom a copy of this decision has been sent, details of those costs with a view to reaching 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 Costs Office is enclosed.

S Jones

INSPECTOR