

Costs Decision

Site visit made on 15 August 2017

by F Rafiq BSc (Hons), MCD, MRTPI

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

Decision date: 30th August 2017

Costs application in relation to Appeal Ref: APP/H5390/D/17/3178056 14 Kenyon Street, London, SW6 6LD

- 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 Rishi Bhari for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - The appeal was against the refusal of planning permission for the erection of a first floor terrace to the rear of the property.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 Appellant considers that the Council have failed to work proactively with the Appellant during the course of the appeal application, citing a specific instance of the Council not responding to an email. It is also said that the Council did not undertake a site visit to understand the site and its relationship with surrounding properties and failed to take account of a similar appeal decision. The Appellant further considers that in relation to noise, the Council have failed to substantiate their case and provide any documentary evidence.
 4. The Council have stated that a site visit was not considered necessary due to a visit having been undertaken on a previous application. I accept that the appeal application for the terrace was different to the previous proposal, and involved different considerations. However, there is no evidence before me that the Officer will not have been fully informed of the relationship to neighbouring properties. As the Council had on a recent previous application visited the site, and given the analysis set out within the Delegated Report, it is clear that they were aware of the appeal site and its relationship with the surroundings in reaching the decision.
 5. In relation to noise and disturbance, the second reason for refusal on the decision notice and the reasoning set out within the Delegated Report
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articulated the harm that the Council considered would result as a result of the proposal. Whilst I have reached a different conclusion on this matter, an element of judgement is required when considering the effect a proposal would have on the living conditions of neighbouring residential occupiers. I am therefore not persuaded that Council acted unreasonably in exercising its judgement or have made vague or generalised assertions about the impact of a proposal, unsupported by objective analysis.

6. The Appellant has also stated that the Council have not determined similar cases in a consistent manner. However, I have found there to be a clear difference between the appeal property and the referenced property as set out in the appeal decision. The Council have also set out a number of differences between the two sites and I do not therefore consider the Council have acted unreasonably in this regard.
7. Paragraph's 186 and 187 of the National Planning Policy Framework state that Local planning authorities should approach decision-making in a positive way and look for solutions rather than problems. The Council did not respond to an email from the Appellant or enter into discussions during the course of the appeal application. I acknowledge the frustration that the Appellant has felt at the lack of response from the Council, who have not set out any reasoning for this lack of communication. They have however stated that they undertook discussions on the previous application site visit, although there does appear to be a difference with the Appellant on this matter.
8. Nevertheless, on the basis of my conclusion on the first reason for refusal on this appeal, I have found that the Council's decision to have been reasonably made. Whilst not condoning the Council's failure to respond, I do not consider that this represents unreasonable behaviour which has led to unnecessary or wasted expense for the Appellant.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

F Rafiq

INSPECTOR