

Costs Decision

Site visit made on 23 October 2017

by P Eggleton BSc(Hons) MRTPI

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

Decision date: 10 November 2017

Costs application in relation to Appeal Ref: APP/K5600/D/17/3181919 31-33 Ansleigh Place, London W11 4BW

- 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 R Lister for a full award of costs against the Royal Borough of Kensington and Chelsea Council.
 - The appeal was made against the refusal of planning permission for the installation of metal railings at main roof level.
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Decision

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

Reasons

2. *Planning Practice Guidance* advises that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellant refers directly to the text within the *Guidance*. It is alleged that the Council acted unreasonably by persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable; failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances; and failing to produce evidence to substantiate each reason for refusal resulting in vague, generalised or inaccurate assertions about the impact.
4. There have been two appeals relating to this property that are of relevance. In 2009, the Inspector concluded that a condition that had previously been imposed, preventing the use of the roof as a terrace, was necessary to protect the amenities of neighbours. In 2010, the Inspector allowed for the installation of metal fencing at roof level on the basis that the condition upheld by the previous Inspector remained extant and enforceable.
5. This proposal is for the same development that was approved by the 2010 appeal decision. The Council's response to this application acknowledges that there has been no material change in circumstances since that appeal. I have also found the differences, such as the changes in the development plan, not to

have materially altered the assessment. The use of the roof continues to be controlled by the condition. The Council has therefore persisted in objecting to a scheme which an Inspector has previously indicated was acceptable; and they have failed to grant a further planning permission for a scheme that is the subject of a recently expired permission where there has been no material change in circumstances.

6. The *Guidance* sets out that a local planning authority is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications or by unreasonably defending appeals. Examples of the behaviour described in the *Guidance* relate directly to the matters considered above. I am in no doubt therefore that the Council has acted unreasonably in refusing the application and in seeking to defend the appeal.
7. The information within the Council's delegated report is extremely limited with regard to the harm that would result from the proposal, with no reference to particular properties, residents or specific windows. However, given my findings, this further element of the application is not a matter on which my decision would turn.
8. Overall, I conclude that the actions of the Council fall squarely within the examples of unreasonable behaviour set out in the *Guidance*. The Council behaved unreasonably in refusing the application. The entire appeal process has represented wasted expense for the appellant. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the *Guidance*, has been demonstrated. A full award of costs is therefore justified.
9. 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 Royal Borough of Kensington and Chelsea Council pay to Mr R Lister, the full cost of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to the Royal Borough of Kensington and Chelsea 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. 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.

Peter Eggleton

INSPECTOR