
Costs Decisions

Site visit made on 15 January 2018

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2018

Costs application A in relation to Appeal Ref: APP/K5600/D/17/3181639 60 Hornton Street, London W8 4NU

- 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 S Tadjbakhsh 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 a basement under the existing building footprint, extending partially under the front driveway and garden areas to the side and rear of the property.
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Costs application B in relation to Appeal Ref: APP/K5600/D/17/3181645 60 Hornton Street, London W8 4NU

- 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 S Tadjbakhsh 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 a basement under the existing building footprint, extending partially under the front driveway and garden areas to the side and rear of the property.
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Decisions

1. Applications A and B for awards of costs are both refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises in its section on appeal costs that these 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. Full awards of costs have been sought by the applicant on a substantive basis. The applicant contends that it was unreasonable for the Council to have refused permission for appeal developments A and B because those development would not adversely affect the Horse Chestnut tree identified as tree T9 or preclude the undertaking of tree planting associated with a landscaping scheme approved in connection with the construction of a single storey side extension. The applicant also contends that the Council has been inconsistent in identifying its new tree planting requirements, with the purpose of that to frustrate the applicant's plans for the property.
4. Dealing with the last part of the costs applications first. Any concerns that the applicant has with the way in which his applications have been processed by the Council and/or the advice that it has been receiving from the Council

should be raised with the Council. I consider those concerns are not for me to comment any further on.

5. In determining appeals A and B I have found that both of the appealed applications were accompanied by an arboricultural report that was not specific to either of the proposed basement schemes. I consider that to be significant because of the limited amount of space that would be available for undertaking the tree planting subject to the approved landscaping scheme or an alternative scheme. I therefore consider it unsurprising that the Council refused the appealed applications because of the deficiency of the arboricultural evidence available to it. That said the wording of the single reason for refusal used by the Council in both of its decisions relating to the potential implications for undertaking new tree planting was not as clear as it could have been. That is because there was no landscaping scheme submitted with either of the appealed applications for the Council to consider. Nevertheless I consider it was reasonable for the Council to have identified the potential for there to be a conflict between implementing either appeal development A or B, in combination with the side extension, and providing suitable replacement tree planting.
6. With respect to the effects of appeal developments A and B on tree T9, in determining the appeals I have found it unlikely that there would be an adverse effect on that tree, on the basis of the absence of roots in the on-site trench excavations. However, given the deficiency of the arboricultural report submitted with the appealed applications, I am unclear what information was actually available to the Council with respect to either development's implications for tree T9 when the Council's determined the applications. I therefore consider that on the evidence available to me it was not unreasonable for the Council to have identified a concern in this regard.
7. Having regard to the provisions of the PPG, most particularly the first and second bullet points of paragraph 049, I find that it was reasonable of the Council to have refused permission for both of the applications.
8. Under the costs regime only costs that are directly attributable to the appeal process are eligible (paragraph 032 of the PPG). Accordingly any property carrying costs incurred during the life of the appeals are ineligible under the costs regime.
9. I also feel bound to comment that the appeal cases made by the applicant were not assisted by what appears to have been the undue haste with which the appeals were submitted and the failure to have due regard to the procedural guidance concerning the making of appeals under the Householder Appeal Service (HAS). That is because one of the appeals was submitted on the same day as the relevant Council decision was made, while the other appeal was made the day following the Council's decision. Both of the appeals were accompanied by a very short document entitled 'Preliminary Appeal Statement'. The full cases (evidence) that the applicant intended to submit were, for whatever reason, only submitted after the twelve week period for lodging HAS appeals had expired.
10. The late evidence was therefore returned to the applicant's agent, in accordance with the Planning Inspectorate's procedure for handling evidence submitted out of time. The guidance for making appeals states '*... Appellants should be confident at the time they make their appeal that they are able to*

*make their full case*¹. It would appear that both appeals were submitted prematurely without heeding the procedural guidance.

Conclusion

11. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated by the applicant. The applications for awards of costs are therefore both refused.

Grahame Gould

INSPECTOR

¹ Paragraph 1.2.1 of Procedural Guide Planning appeals – England published by the Planning Inspectorate on 5 August 2016