
Costs Decisions

Site visit made on 19 December 2017

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 February 2018

Costs application in relation to Appeal Ref: APP/Z5630/W/17/3188026 Building to the rear of 402-404 Ewell Road, London KT6 7HF

- 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 Redtree Ventures for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
 - The appeal was against a refusal to grant approval required under Class M of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from financial and professional services (Class A2) to 2 No. one bedroom flats (Class C3).
-

Decision

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

Preliminary Matters

2. In addition to the appeal which is the subject of this costs application (Appeal A), I have also determined a second appeal for essentially the same proposal at the same site under reference APP/Z5630/W/17/3180622 (Appeal B).

Reasons

3. The Planning Practice Guidance (PPG) advises¹ 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. Awards against a local planning authority may be either procedural relating to the appeal process, or substantive, relating to the planning merits of the appeal.
4. The Council has acknowledged that it failed to determine the application within the statutory timeframe of 56 days. In such cases the PPG² states that *"If it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation."* The Council has explained that it issued the decision four days after the deadline, due to maladministration.
5. The PPG goes on to state that if an appeal is allowed, *"the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the*

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 048 Reference ID: 16-048-20140306

determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay."

6. Whilst I have allowed the appeal, it will be evident from my Decision that the lease agreement and street view photographs, in combination with the VOA Business Rates Valuation, were key to my conclusion that the proposal would fall within the limitations of paragraph M.1(a) of the GPDO³. The lease and photographs were only provided as part of the appellant's rebuttal to the Council's appeal statement. The appeal would therefore have failed based solely on the information that was submitted with the application.
7. Nevertheless, I note the Council's appeal statement in respect of Appeal B states in paragraph 3 that *"The appellant has provided some evidence in the form of Council tax records that the building was in use as storage in conjunction with the bank. As such, the Council considers that this concern has been resolved."*
8. The Council state that additional evidence was submitted by the appellant for Appeal B and some of the objections were removed for that appeal as a result. The Council also state that this evidence was not submitted for Appeal A and therefore could not have been taken into consideration and that its objections remained.
9. Even if this was the case, the Council still held this additional information and were able to act upon it. They did not, and declined to do so even when the appellant drew the discrepancies to its attention via email on 5 December 2017. This amounts to a lack of co-operation and a lack of on-going case management. Moreover, the appellant has provided an email dated 21 July 2017 which demonstrates that the additional information was provided for Appeal A at application stage. Whilst I was not persuaded on this evidence alone, it is clear, on the basis of the foregoing, that the Council has not determined similar cases in a consistent manner. I therefore find unreasonable behaviour in respect of the first reason for refusal.
10. Furthermore, as the Council confirm that it did not determine the application within the 56 day statutory period, permission has been deemed to be granted, subject to the development being permitted development. Therefore, it is not necessary or appropriate to consider whether prior approval is required for the matters set out in paragraph M.2(1) of the GPDO, including whether the development would be acceptable in terms of its transport and highway effects.
11. The Council has not therefore reviewed its case promptly following the lodging of an appeal, as part of sensible on-going case management. Consequently, the appellant has been faced with the unnecessary costs of the appeal in respect of the second reason for refusal, regardless of the merits of the same.
12. Whilst I have taken a different view to the Council regarding its third reason for refusal, in terms of whether the proposal falls within the limitations of paragraph M.1(c), this is a matter of interpretation and I do not consider that the position taken by the Council amounts to unreasonable behaviour.

³ Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

13. Nevertheless, the Council's actions in respect of its first two reasons for refusal amount to unreasonable behaviour contrary to the guidance in the PPG. The appellant has therefore been faced with the unnecessary expense of the preparation of an appeal statement and lodging the appeal, using the services of a planning agent against the Council's first two reasons for refusal.

Conclusion

14. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of the first and second reasons for refusal and that a partial award of costs is justified.

15. Costs Order

16. 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 Royal Borough of Kingston-upon-Thames shall pay to Redtree Ventures the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's first and second reasons for refusal.
17. The applicant is now invited to submit to the Council of the Royal Borough of Kingston-upon-Thames, 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.

Richard S Jones

INSPECTOR