The Planning Inspectorate

Costs Decision

Site visit made on 3 June 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2019

Costs application in relation to Appeal Ref: APP/T5720/W/19/3223835
18 Arras Avenue, Morden SM4 6DF

- 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 Apex Investment Management Limited for a full award of costs against the Council of the London Borough of Merton.
- The appeal was against the refusal of an application for planning permission for: Conversion of existing redundant former Wyvern Youth Centre into six residential units (2x 1 Bed Units, 1x 2 Bed Unit, 3x 3 Bed Units) to include reroofing, skylights, new door and window openings and facade cleaning. With associated parking, refuse, landscaping and cycle storage.

Decision

1. An award of costs is not made.

Reasons

2. Planning Policy Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The appellant's claim principally relates to the handling of the planning application by the Council, in particular a suggestion that although the planning officer report considered by the Committee recommended that the application be approved, the Committee were aware that another officer had been of the view that the application should be refused.

4. The Council acknowledges in its statement that the original case officer recommended refusal of the application, and that Members supported the 'initial' officer recommendation.

5. A second element to the applicant's claim relates to the comment in the Council's appeal statement concerning access to the parking area to the front of the property from the flats. The applicant considers that this amounts to a new reason for refusal, not included in the decision notice.

6. The Planning Practice Guidance (PPG) gives examples where a Council's handling of the planning application leading to the appeal may be judged to be unreasonable behaviour[1]. These do not include the sort of circumstances referred to by the applicant, unusual though they may be. Elsewhere in the

[1] Planning Practice Guidance Paragraph 048 Reference ID 16-048-20140306

PPG it is advised that actions by either party at the application stage can be taken into account when considering a costs claim, but the overriding principle is that it is only costs incurred during the appeal stage which can be recovered. Therefore, whilst I can understand the applicant's concern that the Committee appear to have received conflicting advice from officers, this of itself does not provide grounds for a successful claim.

7. In its response the Council has acknowledged that the observation that a draft internal report had been prepared with a contrary recommendation to the final version should not have been made in the appeal statement. This does not however change my conclusion that the events in question occurred at the application stage and not during the appeal.

8. In terms of the second grounds for the claim, the Council accepts that the comment in its appeal statement regarding the access to the parking areas was not part of the reasons for refusal and does not wish it to be regarded as part of its case in the appeal.

9. In considering whether this second issue constitutes unreasonable behaviour, I have taken in to account the PPG advice on when actions may give rise to a procedural award against a Council[2]. Whilst the issue of access to the parking areas did not form part of the reasons for refusal, the Council acknowledges such in its statement. The PPG refers to situations where introducing a new reason for refusal results in the prolonging of proceedings, which is not the case here. Therefore, on balance I am persuaded that the Council's actions in respect of this issue do not amount to unreasonable behaviour.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Tim Wheeler

INSPECTOR

[2] Paragraph 047 Reference ID: 16-047-20140306