



Costs Decision

Site visit made on 2 July 2019

by J Wilson BA Hons BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 15th July 2019

Costs application in relation to Appeal Ref: APP/K5600/W/19/3226320 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 Shahriar Tadjbakhsh for a full award of costs against The Council of The Royal Borough of Kensington & Chelsea.
 - The appeal was against the refusal to grant a variation of a condition for planning permission for:- Variation of condition 2 (approved plans) of planning permission 16/03553 allowed under appeal ref: APP/K5600/W/17/3173181 to allow minor extension to basement; reduction in footprint of side and rear extensions at ground floor level; repositioning of light wells, front entrance and single parking bay at ground floor level and skylights to main roof; removal of brick shed to the corner of Pitt Street and Hornton Street; demolition and rebuilding of north-south wall between entrance and side garden; and enhanced landscape proposals without complying with condition 2 attached to planning permission Ref PP/18/02198, dated 15 June 2018.
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Decision

1. The application for an award of costs is allowed in the terms set out in the formal costs decision in paragraph 13 to 15.

Reasons

2. The application was made in writing within the prescribed period. It was not specific whether it was made for a full or partial award of costs however as it requests the costs of the consultants undertaking the appeal; the architects costs involved in supporting the appeal; and carrying the costs of the property for the additional time period taking in obtaining permission I have regarded it as an application for a full award of costs.
3. The applicant contends that the Council has behaved unreasonably by: a) the manner in which it handled the planning application; b) delaying a decision to allow for an extended consultation period; c) inappropriate interference in the application process; d) undue and excessive delay in relation to the acoustic report; and e) issuing multiple decisions on the same application. I shall deal with these matters in turn.
4. Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary expense in the appeal process. It is an accepted principle that parties in planning appeals normally meet their own expenses. An award of costs does not extend to indirect losses and this includes any delay in obtaining planning permission.

5. With regard to the manner in which the application was handled by the Council, including matters relating to a change in the case officer and a complaint regarding the inappropriate interference by an officer subsequently removed from the case, these relate to the application and not the appeal process. Likewise, the additional consultation period following the receipt of additional information is a normal part of the planning process particularly where details are amended, or additional information is required to resolve a technical point and this is also part of the normal application process. I understand the frustration that delay can cause, and I also note that the Councils' senior staff responded to the applicants' complaint during the application process (prior to the application decision being issued). In this they gave their explanation for the handling of the application with regard to the applicants perceived bias however these are also not appeal related matters. Therefore, matters a) to d) set out in paragraph 3 above have not resulted in unreasonable behaviour in the appeal process nor do I have evidence that they caused unnecessary work in relation to the appeal.
6. Turning to the matter of the two decision notices; all the available evidence has been carefully considered and the decisive issue is whether the Council's action in issuing two decision notices, amounts to unreasonable behaviour and that this led to wasted expense in the appeal process.
7. The Council issued two different decision notices both dated 20 March 2019. In fact, the Council confirm that they were issued six days apart. Each decision notice detailed two reasons for refusal. In the first decision reason one related to design, and reason two related to the absence of an acoustic report which demonstrated compliance with noise criteria. In the second decision notice reason one was replicated however reason two, (the acoustic reason) was omitted and replaced with a further detailed design reason. I have no evidence before me to suggest that any further explanation was given by the Council either verbally or in writing at that time to explain why it was necessary to issue a second decision notice.
8. The Council in its rebuttal statement to this application refers to an unfortunate error which was corrected as soon as the fault became evident. They go on to argue that it was clearly an administrative error but then also suggest that as acoustic matters had been resolved this should have been clear to the applicant who could have checked the position at any point.
9. Nonetheless every applicant has a reasonable expectation that the basis on which a planning application is determined should be clear, easily understood and justified and I consider it was incumbent on the Council to explain the reasoning for the change and the implications of it. The Council accept that the issue of two notices would have been confusing but argue that this would have had no bearing on the decision to appeal against the refusal and therefore would not have caused any significant costs for the applicant. The applicant suggests otherwise; in the light of different decisions he considers it was necessary for him to address all matters raised across both decision notices.
10. Any decision notice for a refusal of planning permission is the statutory document for articulating the reasons for refusal and is the basis on which an applicant chooses whether to appeal. The issue of two different decision notices without any substantive explanation amounted to unreasonable behaviour on the part of the Council and this led to elements of additional and unnecessary

expense. However, that expense would have been limited to those parts of the appeal preparation which related to acoustic matters and not to the original or revised report which were clearly part of the application process.

11. The appellant in the rebuttal statement raises additional unreasonable behaviour by the Council in seeking to add additional conditions unrelated to the variation application under consideration. Additionally, to vary the content of conditions that had already been discharged in respect of the original permission for example matters related to the choice of materials, he argues has also resulted in time and expense for him in responding to these matters.
12. Any application to vary a condition is specific to the defined matters of that application. The actions of the Council in seeking to revisit matters that had already been resolved and to introduce additional conditions unconnected with that part of the application being revisited also amounts to unreasonable behaviour; as does their lack of attention to detail in relation to conditions. I am satisfied that this has also led to some additional and wasted expense for the applicant.

Conclusion

13. For the reasons given above, I conclude that unreasonable behaviour, as described in the PPG has occurred and involved some unnecessary expense. Therefore, in these circumstances a partial award of costs is justified.
14. The application for an award of costs is allowed in the terms set out below: such award to be limited to only the costs involved in that part of the appeal relating to a) the explanation of the acoustic report in the appeal papers; and b) the handling of the conditions which had been previously agreed or which related to the attempt to add new conditions not related to the revised details.

Costs Order

15. 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 Kensington & Chelsea shall pay to Mr Shahriar Tadjbakhsh partial costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to The Council of The Royal Borough of Kensington & Chelsea, 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 Office is enclosed.

Janet Wilson

INSPECTOR