



Costs Decision

Site visit made on 15 July 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2019

Costs application in relation to Appeal Ref: APP/H5390/W/19/3228935 2C, D, E Macfarlane Road, Shepherds Bush, London W12 7JZ

- 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 Ms J Stadlen (Knickerbockerglory Ltd) for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - The appeal was against the refusal of planning permission for installation of air conditioning condenser unit to external wall fronting Macfarlane Road.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (the Guidance) advises 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.
3. The application for costs has been made essentially on grounds that the appeal could have been avoided if the Council had properly considered the screening effect of the existing railings, or if it had used a condition to secure further screening to mitigate the impact of the development.
4. The Guidance indicates that local planning authorities will be at risk of an award of costs against them if for example, they cannot substantiate a reason for refusal, or refuse planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
5. From the evidence before me it appears that there was some discussion between the Council and the applicant over the siting of the proposed air conditioning unit and effect of the existing railings during consideration of the application. The effects in this regard were assessed in the delegated report. For the reasons set out in my decision, I too found that the existing railings would not screen the harmful effect of the air conditioning unit and that conditions would not be appropriate to address these concerns.
6. Accordingly, I do not consider that the Council failed to properly evaluate the application, or use suitable conditions to enable the proposed development to go ahead, and therefore the appeal could not have been avoided.

7. On the other matters raised in the application, I do accept the point on the superseded National Planning Policy Framework paragraph numbers in the informative on the Council's decision notice, but this was not part of the refusal reason and is therefore not germane.
8. Also, whilst noting the applicant's contention that the business has suffered as a result of not being able to benefit from use of the proposed air conditioning over the summer months, the Guidance is clear that costs awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission. In any event, I have found that the Council had reasonable concerns about the impact of the proposal which justified its decision.

Conclusion

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

Adrian Caines

INSPECTOR