



Costs Decision

Site visit made on 30 July 2019

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th August 2019

Costs application in relation to Appeal Ref: APP/T5720/W/19/3226607 54 Marryat Road, Wimbledon Village, London SW19 5BD

- 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 M Brune for a full award of costs against the Council of the London Borough of Merton.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission described as the demolition and re-building of 54 Marryat Road on a like for like basis as per planning permission 17/P3878.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 'PPG') advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellant submits that the Council has acted unreasonably on two grounds.
4. The first ground for costs is made on the basis that the Council was unreasonable in failing to determine the application and failing to give a date by which it would be determined, such that the applicant was put to the cost of lodging an appeal against non-determination.
5. The second ground for costs is made on the basis that the Council failed to afford an appropriate amount of weight to an extant planning permission¹ when assessing the overall planning balance. The appellant argues that the Council have failed to explain in any detail the reasoning for their resistance of the current proposal, when there is an extant permission in place which allows for extensive works to the existing building.
6. Paragraph 47 of the PPG sets out examples of unreasonable behaviour which may give rise to a procedural award of costs, including a lack of co-operation with the other party or parties and failure to adhere to deadlines.

¹ Council Ref: 17/P3878 – This decision of 11 January 2018 grants planning permission to erect a two-storey rear extension, partial basement, replacement garage with accommodation within the roof space and to upgrade the external materials of the dwelling.

7. Paragraph 48 of the PPG 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. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period'*.
8. The statutory period for the Council's determination of the application ended on 8 April 2019 and the appeal was submitted on 11 April 2019. There is no evidence before me which suggests the Council requested an extension of time to the statutory period.
9. The Council's response to the cost application, states that although the Council had not issued a decision by 8 April 2019, its Officers were in the process of drafting a report recommending refusal under delegated powers. Whilst this may have been the case, there is no evidence before me of any communication from the Council to the applicant to explain the ongoing delay in determining the application. Consequently, the applicant would have had no indication of when a decision might be forthcoming, and I consider that this was unreasonable behaviour on the part of the Council.
10. Whilst the Council did not determine the planning application, they did express concerns about the proposal in written pre-application advice on 22 November 2018. The concerns related to the loss of the existing building, which is locally listed, and the subsequent harm this would cause to the Merton (Wimbledon North) Conservation Area (the 'CA'). The Council's response to the cost application refers to the negative pre-application advice and states that the applicant would have known that the planning application would not have been supported. Whilst this may have been the case, negative pre-application advice does not prevent an applicant from submitting a planning application, which should be determined within the statutory period, unless otherwise agreed.
11. The Council has confirmed that it would have refused the application for two reasons. An officer report was only provided during the appeal. The report identifies the alleged harm and the policies of the development plan that the Council considered there to be conflict with. The first reason relates to the loss of a locally listed building and the subsequent harm that this would allegedly cause to the character and appearance of the CA. The second reason relates to the impact of the development upon an existing tree within the curtilage of No 58 Marryat Road².
12. Paragraph 49 of the PPG states that examples of unreasonable behaviour by local planning authorities includes a failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
13. It will be seen from my decision on the appeal that I disagree with the Council and their assessment of the proposal, which is set out within the officer report that was provided during the appeal. Whilst I have not agreed with the

² The Council's Statement refers to a mature tree within the curtilage of the neighbouring property, No 56 Marryat Road. However, there is not a No 56 and therefore this appears to be a typographical error. Based on the evidence from the main parties and my site visit, it is clear that the Council are referring to No 58 Marryat Road.

Council's views about the proposed development, that in itself does not mean that the Council acted unreasonably.

14. When considering the 'Principle of Demolition' issue, the Council's officer report describes the significance of the building and the relevant planning policies. It then goes on to conclude that as the proposal would result in the loss of a locally listed building which makes a positive contribution towards the character and appearance of the CA, the proposal would cause substantial harm to the designated heritage asset. As such, the report concludes that the proposal would conflict with the development plan and therefore the Council raise an objection to the principle of demolition.
15. Notwithstanding the above, the Council's officer report is devoid of any meaningful consideration in respect of the applicant's fall-back position, which is a material consideration in this case. It fails to attribute any weight to the extent of work permitted by the extant planning permission and the effect that the approved works would have upon the existing building's contribution to the character and appearance of the CA. Instead the officer's report focuses solely upon the principle of demolition, as opposed to whether the proposal, when considered as a whole, would preserve or enhance the character or appearance of the CA.
16. Consequently, the Council's conclusion that the proposal would cause substantial harm to the CA is unsubstantiated because it relies upon an inaccurate assertion, which is unsupported by any objective analysis. I consider that this was unreasonable behaviour on the part of the Council.
17. Turning to the issue of unnecessary or wasted expense, the failure by the Council to determine the application or provide a timescale for determination led directly to the applicant submitting the appeal. In addition, I have found that the Council's first reason for refusal within the Council's officer report was unsubstantiated. As such, the Council's actions have meant that the appellant has incurred unnecessary expense in preparing their appeal documents and an award of costs is justified.

Conclusion

18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

19. 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 London Borough of Merton shall pay to Mr M Brune the 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.
20. The applicant is now invited to submit to the Council of the London Borough of Merton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Christopher Miell
Inspector