
Costs Decision

Hearing Held on 24 September 2019

Site visit made on 24 September 2019

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4th October 2019

Costs application in relation to Appeal Ref: APP/K5600/W/18/3206267 60 South Edwardes Square, London, W8 6HL

- 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 Paul Killik for a full award of costs against the Royal Borough of Kensington and Chelsea.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of a front wing extension with hipped roof and installation of M&E plant.
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Decision

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

The Submissions

2. The costs application was submitted in writing and a written response received from the Council ahead of the Hearing. While an opportunity was given at the event for the appellant to make final comments, it was confirmed by the appellant that they had no further oral comments to make.

Reasons

3. Planning Practice Guidance (PPG) 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.
4. PPG sets out types of behaviour which may give rise to an award against a local planning authority and the appellant submits that the Council has acted unreasonably in refusing consent as they a) prevented development which should have clearly been permitted having regard to its accordance with the development plan, national policy and any other material considerations. It is also held that the Council failed to produce evidence to substantiate each reason for refusal giving only vague, generalised and inaccurate assertions without objective evidence.
5. The Officer Report clearly summarises the representations received, and it was clear that there were a number of local concerns regarding the proposals. I have noted the recommendation for approval by the Council Officers. This was overturned by Members, however the decision is one which is a matter of judgement.

6. While I have found in favour of the proposals, I consider that the decision notice and other documentation set out in sufficient detail the reasons for the harm Members identified to the Temple (grade II listed) and Edwardes Square (grade II* registered park and garden). I do not therefore accept that this decision was based upon vague or generalised assertions but a realistic concern regarding these heritage assets.
7. It is an oddity that Members focussed their objections on 2 designated heritage assets, when there were other assets including the Conservation Area and other grade II listed buildings. These are interrelated to the assets highlighted in the decision notice. While I have found no harm to these, there appears to be little dialogue by Members of the other assets in their consideration of the application. In making a case for harm to the Temple and the Gardens, it appears as somewhat illogical to have 'cherry-picked' some assets over others. This does call into question the Members general decision making process in respect of heritage assets.
8. That said, this matter in itself would not attract an award of costs as the appellant would have needed to address such matters in any respect due to the local objections on these and the relevant statutory duties. Moreover, as I have stated above, the case made in respect of the assets Members did identify was reasonable. The Council Members in this case were entitled not to take the professional advice of Officers so long as a case could be made for the contrary view and thus I do not accept that Members are required to be experts in historic environment matters when determining such applications.
9. Overall, I find that their behaviour was not unreasonable and as such, there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

10. I therefore conclude that, while the appeal has succeeded, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated.

C Searson

INSPECTOR