



Costs Decision

Site visit made on 23 September 2019

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 14 October 2019

Costs application in relation to Appeal Ref: APP/X5990/W/19/3228327 Alexander House, 85 Frampton Street, London NW8 8NQ

- 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 Kenlyn Ltd for a full award of costs against City of Westminster Council.
 - The appeal was against the refusal of an application for planning permission for the construction of an extension at 5th floor level to create 1No 3-bed 6-person flat.
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Decision

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

Reasons

2. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense.
3. In relation to design and the effects of the proposal on the character and appearance of the area, I can find no evidence to support the appellant's view that the planning case officer is insufficiently qualified or experienced to make a judgement on this matter. Furthermore, the Council confirms that its Head of Conservation and Design North Team gave comments and these are incorporated into the relevant report. The fact that these comments are almost identical to a very similar earlier scheme is not surprising to me. I find no unreasonable behaviour in this respect.
4. The appellant makes reference to another scheme elsewhere in the City of Westminster which was granted planning permission at the same time as the appeal scheme was refused and suggests unreasonable behaviour by the Council. I have been given some details of that case, but by no means have I been provided with full details. In any event, just because a different scheme within a conservation area is granted planning permission does not automatically mean that the appeal scheme should succeed. The appellant also makes reference to the level of officer attention given to the other scheme and suggests that the appeal scheme was not given sufficient attention. I cannot reasonably judge how much attention was given to each case in this respect but I am satisfied that the appeal scheme has been determined in a reasonable manner in this respect. In addition, I have agreed with the Council's conclusions that the proposal would have an unacceptable effect on the character and appearance of the area.

5. With regard to the Council's consideration of some buildings in the locality being considered as non-designated heritage assets the appellant includes a section of the Planning Practice Guidance (PPG) on the identification of these matters. However, I note that the PPG indicates that these sections arise from revisions made in July 2019 which considerably post-dates the determination of the application by the Council. In any event, the PPG also indicates that non-designated heritage assets may be identified as part of the decision-making process on planning applications. In addition, the Council has indicated that they have made the appellant aware of this matter during previous applications. In this context and on the basis of the evidence submitted, I do not consider it unreasonable that the Council considers some of the surrounding buildings as non-designated heritage assets, although this matter is not determinative in the appeal decision.
6. In relation to sunlight and daylight I can see that the previous scheme was the subject of a full assessment and it appears that it was indicated that there would be some effects on neighbours in this respect but that this was seen as acceptable. The Council indicated that a full assessment should be undertaken for the appeal scheme but the appellant indicates that the alterations made in this respect would obviously be an improvement over the previous scheme. I can see the Council's reference to the effects on neighbours and it would appear that there could be some marginal interference in relation to the second floor of the neighbouring 65 Penfold Street, although I have indicated that this would be acceptable in my judgement. The Council's view was taken that an assessment for the appeal scheme should be undertaken. Whilst I can understand that each scheme should be duly assessed where necessary, my judgement is that, in the context of the previous scheme, and given the marginal effects, a conclusion could be reached that no undue effects would arise. The Council's approach appears to be cautious in seeking absolute confirmation. Although I do not share their view, I do not think that it was unreasonable and in any event it does not appear that the appellant has had to prepare new material in this respect and an appeal would still have been necessary due to other objections to the proposal.
7. With regard to noise and disturbance, the Council appears to take the stance that it does not wish to impose a condition if it is not possible to comply with the condition, and so would prevent the implementation of a planning permission. In itself, this is entirely reasonable in my view. There is a judgement to be made when imposing conditions and it may not be appropriate to put applicants in the position whereby they almost have to satisfy the requirements of the condition before it is imposed. Having considered the submission in this respect, I do not find the Council's case to be unreasonable due to the different configuration of the proposal in comparison to the previous one. However, my ultimate conclusion is that a condition would be appropriate but I do not consider the Council's position to be unreasonable.
8. As a consequence of my findings, I conclude that the Council's actions have not been unreasonable. Therefore, the conditions necessary for an award of costs have not been satisfied.

S T Wood

INSPECTOR