
Costs Decision

Hearing Held on 10 September 2019

Site visit made on 10 September 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Costs application in relation to Appeal Ref: APP/C5690/W/19/3220004 1 Sydenham Park, London SE26 4EE

- 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 GVAP Holdings Ltd for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against the refusal of planning permission for the change of use of the existing building at 1 Sydenham Park, SE26, from storage (class B8) to residential (class C3) to provide 2 x three bed, 6 x one bed, and 1 x studio residential units including provision of cycle parking and refuse storage, together with the construction of a mansard roof extension to create a second floor, a 2 storey extension to the side and installation of replacement windows and doors.
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Decision

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

Procedural Matters

2. The applicant submitted a written claim for costs and had the opportunity to add to that claim verbally at the hearing. The Council's costs response was provided verbally at the hearing. The applicant had the opportunity to consider the Council's response and provide rebuttal comments at the hearing.

Reasons

3. Planning Practice Guidance (the 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. Parties in planning appeals and other planning proceedings normally meet their own expenses.
4. The applicant considers that the Council acted unreasonably in that they failed to have proper regard to a fallback position in respect of an existing prior approval permission and that the appeal scheme should have been permitted as it represented a "composite" of two previous applications both of which were permitted or approved by the Council.
5. In respect of whether the appeal scheme could be considered to be a "composite" of other approved and permitted schemes, the evidence before me indicates that the Council gave clear reason why it considered the schemes are materially different. I conclude that the appeal proposal is different to the previously approved and permitted schemes and, as such, represents a

separate and new scheme. Consequently, there is no unreasonable behaviour by the Council with regards to this part.

6. Furthermore, it is clear from the Council's report that the fallback position was considered. The Council recognised the fallback position as a material consideration but afforded the fallback position little weight in the planning balance which, as decision taker, the Council was entitled to do. The Council maintained that little weight should be afforded to the fallback position because it is different to the appeal proposal in that, whilst it was acknowledged that the appeal scheme would result in improved levels of internal amenity space when compared to the fallback position, in terms of outlook and overall living conditions of future residents, the appeal scheme would be equally, or more, harmful than the fallback.
7. Whilst I have come to a different conclusion to the Council on the amount of weight to be ascribed to the fallback position, it is not the case that the Council failed to recognise it exists or failed to consider the weight which should, in their belief, be attached to the fallback position.
8. Furthermore, the applicant considers it unreasonable of the Council to conclude that the extant permission is unlikely to be implemented by reason of subsequent planning applications submitted by the applicant which, in the view of the Council, provided a significant improvement in terms of living conditions, than under the appeal scheme or fallback position.
9. Evidence of the likelihood that the fallback position in this case may be carried out, was referred to by the applicant at the hearing. Based on the evidence, it appears the Council did not have this information when it made its decision. Consequently, the Council had limited information to be convinced that the appellant would implement the fallback position. I do not consider the Council's position was unreasonable in this regard.
10. For the reasons above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for a full award of costs is refused.

A Spencer-Peet

INSPECTOR