
Costs Decision

Site visit made on 31 October 2019

by **R Sabu BA(Hons) MA BArch PgDip ARB RIBA**

Decision date: 25 November 2019

Costs application in relation to Appeal Ref: APP/T5720/W/19/3232326 87 Robinson Road, Tooting, London SW17 9DN

- 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 Craig Daniel for a full award of costs against the Council of the London Borough of Merton.
 - The appeal was against the refusal of planning permission for demolition of existing 3 storey property and outbuilding and erection of new 3 storey building consisting of 9 self-contained units with associated off-street parking space for each unit, secure cycle storage and refuse and recyclables storage and landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The PPG states that examples of unreasonable behaviour which may result in an award of costs include lack of co-operation with the other party or parties and delay in providing information or other failure to adhere to deadlines.
5. The planning application dated 14 December 2018 was refused by notice dated 27 June 2019, which is a significant period after the statutory expiry date. I note the evidence relating to the timing of submission of a revised ecology report. I also note that the revised drawings, upon which the Council determined the application, are dated April 2019, suggesting that design of the proposal was ongoing after the standard period for determination. Consequently, I do not consider that the Council behaved unreasonably in this particular regard.
6. While I note that the appellant re-wrote the appeal statement to respond to the reasons for refusal rather than as an appeal against non-determination, given the circumstances of the case, and that it is unlikely that an appeal would have

been avoided, I do not consider that unnecessary or wasted expense in the appeal process were incurred.

7. The PPG also states that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead would constitute unreasonable behaviour that may give rise to a substantive award against a local planning authority.
8. With regard to the reason for refusal regarding parking and the Unilateral Undertaking (UU), the PPG also states that, no payment of money or other consideration can be positively required when granting planning permission. In addition, the PPG requires exceptional circumstances for negatively worded conditions such as restricting the commencement of development until an agreement is in place. No relevant exceptional circumstances are before me that would have justified such a condition. While I note the evidence regarding the request of a template for a legal agreement from the Council, from the evidence before me, a signed and dated UU was not sent to the Council prior to the determination of the decision or submission of the appeal application. Consequently, the Council did not behave unreasonably in this respect.
9. Turning my attention to the reason for refusal relating to waste management, I see no reason why this issue could not have been dealt with via a condition, therefore the Council has behaved unreasonably in this respect. However, given the circumstances of the case, and that an appeal would have been likely to have submitted regardless of this particular matter, I do not consider that unnecessary or wasted expense in the appeal process has been incurred as result of this particular matter.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Conclusion

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

RSabu

INSPECTOR