

Costs Decision

Site visit made on 19 November 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2019

Costs application in relation to Appeal Ref: APP/A5840/W/19/3236234 122-126 Tooley Street, London SE1 2TU

- 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 R West and Mr T Newman for a partial award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the refusal of planning permission for a roof extension to provide a three bedroom flat.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) 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. In order to be successful, an application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Parties in the appeal process are normally expected to meet their own expenses. The Guidance advises that local planning authorities are encouraged to properly exercise their development management responsibilities, and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay.
3. The applicants say that the Council have acted unreasonably by: introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; and made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. I have had regard to the Council's written response to the applicants' application for an award of costs which the applicants have had the opportunity to comment upon.
4. The second reason for refusing planning permission set out on the Decision Notice stated, among other things, that the development would result in unacceptable harm to the amenity of the adjoining occupiers by way of reduction in access to daylight for the occupiers of Kamer House to the south.
5. Kamer House is actually Kamen House. In paragraph 29 of the Officer Report the Council stated that "in light of the site's central London location and the distance to the occupiers in the wider area, such as those in Ashton Webb House, Kamer House to the south and Oxford Drive to the west, the impact to these occupiers in terms of the harm to their amenity incurred has not been

given any weight in the assessment of this application.”

6. The Council recognise that there is an inconsistency between the Officer Report and the second reason for refusal set out on the Decision Notice. While, the Council may have only identified the issue after the Officer Report was drafted but before the Decision Notice was issued, the applicants are entitled to rely on the analysis within the Officer Report. In this regard, greater care ought to be taken to ensure that the Officer Report and Decision Notice are consistent.
7. The Council explain that they considered the proposed extension would breach a 25 degree line when measured from the windows facing the site on Kamen House. The Council say that in such circumstances the 2015 Technical Update to the Residential Design Standards Supplementary Planning Document requires a technical daylight analysis. As no such assessment was before the Council in respect of Kamen House, the proposal’s impact was deemed unacceptable and included as a reason for refusal.
8. Despite the Officer Report, it is logical that the Decision Notice would be read as it identifies the reasons for refusing planning permission. As the second reason for refusal identifies alleged harm to the living conditions of occupants of Kamen House, the Council has not introduced this matter at appeal.
9. I recognise that the applicants have produced an External Daylight Study dealing with the impact of the proposed extension on Kamen House. Aside to the merits of this document, I do not consider that the applicants have been put to additional expense in addressing this aspect of the case. If they were unsure about the Council’s stance, clarification could have been sought.
10. The second aspect of the applicants’ application relates to the Council’s stance, taken during the planning application and now at appeal, in respect of the proposed extension’s effect on the sixth-floor level roof light and the living conditions of the occupants of this flat. To support their scheme, the applicants External Daylight Study – Revised to Account for Planning Refusal was based on BRE Guidelines. The Council did not dispute the findings of this assessment, but instead relied on an appeal decision (Ref: APP/A5840/W/18/3202899) which explored the effect of the development proposed in that scheme on the living conditions of the occupiers of the residential units below which had benefitted from unobstructed access to light from their roof lights.
11. By referring to this appeal decision, the applicants say that the Council have made vague, generalised and inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis. In defending their stance, the Council contended that the two schemes are directly comparable. While I did not agree for the reasons set out in my decision, the Council’s stance was a planning judgement that it was entitled to make. It is of note that the applicants did not explain away the Council’s reasoning. As such, it has not been clearly demonstrated what unnecessary or wasted expense has been caused above what parties are normally expected to meet.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Andrew McGlone

INSPECTOR