



Costs Decision

Site visit made on 10 December 2019

by M Seaton DipTP MRTPI

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

Decision date: 4 February 2020

Costs application in relation to Appeal Ref: APP/K5600/W/19/3236253 40 Lexham Gardens, London, W8 5JE

- 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 David Lonsdale (on behalf of Magnificent Basement Company Ltd) for a full award of costs against The Council of The Royal Borough of Kensington & Chelsea.
 - The appeal was against the refusal of planning permission for variations to planning permission 17/06844 [demolition of single storey garage & redevelopment with lower ground (basement) level to provide one bedroom flat] including amended design including new central stair location, addition of external staircase in the lightwell (involving extension of the lightwell), forward extension of front façade by one metre, addition of high level windows in south eastern wall (facing the mews), relocation of the roof lights.
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Decision

1. The application is dismissed.

Reasons

2. The Planning Practice 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
3. The applicant contends that the Council has acted unreasonably by refusing planning permission, not on the planning merits, but on the basis that the applicant was unwilling to enter into Section 106 (s106) legal agreement removing the rights of the appellant and future occupiers to have a parking permit. Furthermore, the amount of legal fees being claimed for the tasks that would necessarily be undertaken by the Council in dealing with a revised s106 legal agreement was also considered to be entirely unreasonable.
4. I have carefully considered the applicant's contention regarding whether the Council's decision to refuse planning permission was a punitive action based on the disagreement over the legal fees. However, I disagree with the appellant's contention in this respect.
5. I accept that the Council were clearly satisfied with both the planning merits of the proposal and the principle of securing of a permit-free development by a s106 legal agreement. However, the failure to achieve and complete the s106

agreement, as a consequence of the dispute over the approach to the legal fees would clearly have meant that the harm identified regarding the impact on the parking environment through the additional demand from the proposed development would not be mitigated. Furthermore, for the reasons set out in the appeal decision, the use of a condition to secure an obligation would not have been appropriate in this instance. Whilst the applicant may consider the action to refuse the planning permission to have been punitive, it is difficult to see that any other options were available to the Council in light of the consequent conflict with the Development Plan. I do not therefore find the Council to have acted unreasonably in this regard.

6. Turning to the amount of legal fees being requested, I note that the applicant has indicated a willingness in principle to cover the reasonable legal fees in connection with the revised s106 legal agreement and that an offer of £200 was made to the Council, which was not accepted. In this respect the Council has indicated that, despite the existence of a previous legal agreement, a number of tasks including the undertaking of due diligence, drafting of the deed of variation, the exchange of copies, preparation of the engrossments, and arrangement of the execution registration of the deed would all have to be undertaken. To this end, either a solicitor's undertaking, which the Council indicates was requested in error for £4000 rather than £2600, or an up-front payment of £2600, was deemed to be a sufficient amount by the Council to cover matters.
7. I acknowledge the willingness of the applicant to enter into the legal agreement, as evidenced by the submitted correspondence and draft legal agreement accompanying the planning appeal, but there remains a disagreement over the amount of fees which would be required to allow the completion of the s106 legal agreement.
8. Whilst it is not for this application to determine what might be an appropriate level of fees, the Council's own submissions clarify that in the event that the matters prove to be more straightforward, the eventual final cost may have been less than the amount quoted for the solicitor's undertaking. In addition, I am satisfied that the Council's indication that continuing contact with the applicant's Legal Team throughout the process with regards the costs including the provision of a final figure before payment on completion, along with the ability to challenge the eventual amount through separate legislation, provides adequate safeguarding against the undertaking accruing unreasonable levels of cost.
9. Therefore, on the basis of the above conclusions, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Seaton

INSPECTOR