
Costs Decisions

Site visit made on 18 February 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Costs application in relation to Appeal A: APP/V5570/W/19/3240359 Rear of 56 Richmond Avenue, Islington, London N1 0NA

- 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 Andrew for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of an existing vacant and derelict single storey building and the erection of a two storey (ground floor and basement), one-bedroom 2-person dwelling house.
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Costs application in relation to Appeal B: APP/V5570/Y/19/3240620 Rear of 56 Richmond Avenue, Islington, London N1 0NA

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr David Andrew for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of an existing vacant and derelict single storey building and the erection of a two storey (ground floor and basement), one-bedroom 2-person dwelling house.
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Decisions

1. I refuse the applications for awards of costs.

Reasons

2. The Planning Practice Guidance advises that parties in planning appeals and other planning proceedings normally meet their own expenses, but that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs (Paragraph: 028 Reference ID: 16-028-20140306).
3. The original reference to seeking costs is contained in the appellant's Appeal Statement at paragraph 2.29 and the appellant confirmed that this was a formal Costs Application. The Council responded to the application and the appellant had the final word.
4. The planning and listed building applications were not determined by the Council within the prescribed period, and the appeals were against that failure to determine. The Guidance states at Paragraph 033 Reference ID: 16-033-

20140306 in answer to the question '*can costs be claimed for the period during the determination of the planning application*' that this is not the case, but all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

5. The Council had issued Notices of Refusal on a previous scheme for the site, and the present Appeal scheme had sought to address those stated Reasons. There appears to have been some delay due to the authorship or attribution of the Planning Statement which is not a matter for the Planning Inspectorate. The remaining issues before the Council related to the standard of the accommodation and the matter of an affordable housing contribution.
6. On the first, the assessment should consider more than just compliance with figures, but there is a need for judgement as to quality. The Council expressed continuing concerns during informal pre-application advice and have provided adequately reasoned arguments to the appeal. The accompanying Planning Appeal Decision has carried out a similar assessment and found that the quality of the accommodation does not reach that sought in national or local policy, as a matter of judgement. The Council's judgement was carried out correctly, that process is not a sign of unreasonable behaviour and an award of costs is not warranted on that count.
7. Regarding the affordable housing contribution, this is a Core Strategy requirement and the accompanying Planning Appeal Decision has considered its imposition on small sites such as here appropriate. This appears to account for some of the delay in the Council determining the scheme, but the evidence is of a willingness to reach agreement, or at least give the appellant the opportunity to provide information in a usable form, rather than a being an unreasonable device to avoid making a decision or delay acceptable development. The Council evidence is well-presented and understandable and is a reasonable response to the appellant's position that the scheme is unviable and an award of costs on this issue is not appropriate.
8. There was delay, the applications being dated in December 2018 while the appeals were dated in November 2019. However, the appellant could have appealed against non-determination at any time after the expiry of the prescribed period, while the Council could have issued a decision on the information available rather than persevere with their proactive approach. This is a case where the Council did act reasonably during the application process and no award of costs should be made for the period during the determination of the planning application. The Guidance Paragraph 032 Reference ID: 16-032-20140306 makes clear that awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.
9. These Costs Decisions have considered matters pertaining solely to the Planning Appeal, whilst there was a parallel Listed Building Consent Appeal. Normal practice would be to issue decisions on both together, and it is the case here that the one would not be implementable without the other, since the building and the wall should be considered as listed along with the host building 56 Richmond Avenue.

10. The previous scheme had a raised rooflight that was considered to cause harm to the significance of the listed building, and that feature was removed from the present appeal scheme. The accompanying Listed Building Consent Appeal Decision is couched in the terms of there being no reason to withhold Listed Building Consent, and that is because both appeals need to be decided. There is no case for an award of costs on Appeal B since the Council's approach to that appeal was not unreasonable. There would be no necessity to issue a Listed Building Consent ahead of the Planning Decision, which the Council were still working towards making acceptable.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated

S J Papworth

INSPECTOR