Costs Decision

Site visit made on 25 February 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th April 2020

Costs application in relation to Appeal Ref: APP/A5840/W/19/3241993
110 Asylum Road, London SE15 2LW

- 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 Simnat PLC for a full award of costs against the Council of the London Borough of Southwark.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a development that has been described as the "Conversion and Extension of existing C3 3 Story property consisting 3 separate 1 bedroom flats. 3 storey rear extension, balcony, new rear doors, new pitch roof to match existing, part flat roof infills, windows to side and rear elevation, part glazed and brick entrance lobby at 3 storeys to accommodate stair case and single storey side extension. Internal alterations to add additional 2No 1 bed units and conversion of ground floor to 4 bedroom unit. Exterior works to include bin storage and bicycle storage."

Decision

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

Procedural Matter

2. The final comments of the appellant indicated that they wished for an award of costs to be made. This has been treated as an application for an award of costs and The Council was given opportunity to respond. However, no response was received. As final comments should only address the case of the other party and not introduce new information, there was no basis to seek further comments from the appellant in respect of The Council's case.

Reasons

3. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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. The PPG[1] also sets out an expectation that parties will normally meet their own expenses.

4. The case for an award of costs has been made within the concluding section of the final comments which, in itself, does not identify which actions of the Council the appellant has deemed to be unreasonable or how this has caused unnecessary expense in the appeal process. Notwithstanding this, the proceeding content of the appellant's final comments submission identify a

[1] Paragraph: 028 Reference ID: 16-028-20140306

number of areas where the Council's appeal statement is not reflective of the proposal for which planning permission was sought.

5. Planning Practice Guidance[2] states that in an appeal relating to the non-determination of an application, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit and explain why permission would not have been granted had the application been determined. In this case, the Council has not provided an explanation for the application not being determined.

6. Moreover, whilst grounds of objection have been provided, they have not been supported by objective analysis as demonstrated by the appeal submissions regularly describing the site and the its content incorrectly. Furthermore, the appeal statement frequently comments on a proposal that is different to the development for which planning permission was sought. For these reasons, I consider that the actions of the Council have been unreasonable.

7. However, for costs to be awarded, it is necessary for unreasonable behaviour to have led to unnecessary or wasted expense. In this regard, the application for costs does not indicate how the actions of the Council have led to additional expenses being incurred.

8. In this regard, the Council's appeal submissions clearly indicate that the application would have been refused. Therefore, I do not find that the actions of the council, or the lack thereof, led to the submission of an unnecessary appeal. Accordingly, the expenses related to the submission of the appeal were not incurred unnecessarily.

9. Furthermore, whilst the reasoning appears to be confused, the identification of general areas of objection has enabled the appellant to establish the main issues and make their case. In this regard, as the submission of final comments is a conventional element of appeal proceedings, it has not been demonstrated that any costs associated with making final comments were incurred unnecessarily.

Conclusion

10. For the reasons set out above, whilst I find that unreasonable behaviour has occurred, it has not been demonstrated that this led to unnecessary or wasted expenses being incurred. As such, the requirements for an award of costs to be granted, as set out within the PPG, have not been met.

Ian Harrison

INSPECTOR

[2] Paragraph: 048 Reference ID: 16-048-20140306