
Costs Decision

Site visit made on 21 May 2020

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2020

Costs application in relation to Appeal Ref: APP/Z5630/W/19/3241018 Land to the rear of 1 Fassett Road, Kingston-upon-Thames KT1 2TD

- 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 Stephen Donovan for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the development of land to the rear of No1 Fassett Road involving the erection of a two storey building with basement for use as student accommodation with 10 en-suite student rooms and communal areas, recreational land to the rear, disabled parking with cycle provisions.
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Decision

1. The application is refused.

Reasons

2. Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Planning Practice Guidance states that examples of unreasonable behaviour by Local Planning Authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The appellant sets out in their application for costs a series of various delays and incidents where it is claimed that there was a lack of any timely response from the Council when considering their planning application. I recognise that these delays and lack of communication would be frustrating, and I particularly note the intention of the applicant to pursue a legal agreement which the Council considered necessary. I also recognise the Council explanation which includes a loss of staff over this period, for example.
5. However, over the course of the application there was an on-site meeting and also some level of correspondence. Some progress was made from the previous refused planning application in terms of some of the reasons for refusal being addressed. Nonetheless, the Statement of Case from the Council makes clear that they still had significant concerns remaining which would likely have led to the refusal of planning permission.

6. On this basis, there is a lack of evidence that the need for the submission of an appeal could have been avoided, even without the delays or lack of correspondence from the Council. It is apparent that the parties were still some way apart at the time when the appeal against non-determination was submitted.
7. This application for costs is limited to a consideration of wasted expense with the appeal process. It is my view that despite the criticisms of the Council throughout the planning application process, I am not persuaded that less delays and increased correspondence between the parties could have avoided the appeal and the associated expense that occurred. Furthermore, there is no substantive evidence that the Council had not been considering the additional information and revised plans submitted with the planning application. Indeed, the evidence from the Council submitted for this appeal is sufficiently detailed as to the harm identified and took into account the potential benefits of the scheme with a planning balance exercise, then concluded against relevant policies.
8. For these reasons, any below standard service from the Council at planning application stage has not, in my opinion, resulted in unnecessary expense for the applicant as the appeal was the likely outcome of the process in any case which would have led to a cost for the applicant.
9. Overall, I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

S. Rennie

INSPECTOR