
Costs Decision

Site visit made on 9 June 2020

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2020

Costs application in relation to Appeal Ref: APP/A5270/W/3246119 62 Sydney Road, West Ealing, London W13 9EY

- 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 and Mrs I Hussain for a full award of costs against the Council of the London Borough of Ealing.
 - The appeal was made against conditions No 3, No 4 and No 5 of a planning permission for conversion of existing dwelling house into two self-contained flats (1x 2 bedroom and 1 x 1 bedroom), alteration of roof from hipped to gable end, rear roof extension, installation of two rooflights to front roofslope and single storey rear/side extension with associated refuse, recycling and cycle parking facilities.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal.
3. Paragraph 32 of the PPG states that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
4. The applicants have provided evidence of various correspondence sent to the Council over a number of months, which queried a condition that was attached to the approved planning permission. The applicants suggest that the Council did not reply to some of this correspondence. Due to the nature of the condition, the applicants were unable to commence development until details had been submitted to the Council for approval, along with the accompanying fee. As the applicants were not able to progress with their proposal and did not receive replies from to their messages, it is clear that the Council acted unreasonably in this instance.
5. The Council states that the condition was included on the permission as it received advice that the information it held on aircraft flight contours showed that the site was under the Heathrow flightpath over West Ealing. However, in my determination of the accompanying appeal for this costs application, I had no substantive evidence before me to support these claims.

6. Whilst I note that the applicants state that the delay in the Council responding has resulted in financial difficulties as the investment costs continue, the PPG makes it clear that a costs awards cannot extend to compensation for indirect losses such as those resulting from delay.
7. Consequently, from the evidence before me, the Council acted unreasonably by imposing Condition No 5 which I found was not relevant, reasonable or necessary in the interests of the living conditions of the existing and future occupiers, with particular reference to noise and disturbance. The Council also failed to produce evidence to substantiate the condition. The appellant has therefore incurred unnecessary expense in pursuing the appeal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Ealing shall pay to Mr and Mrs I Hussain the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicants are now invited to submit to the Council of the London Borough of Ealing, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Peppitt

INSPECTOR