



Costs Decision

Site visit made on 23 July 2020

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2020

Costs application in relation to Appeal Ref: APP/A5840/W/19/3243879 12-14 Marshalsea Road, London, SE1 1HL

- 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 Ian Ogilvie of Cyrus Homes Ltd for a partial award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the refusal planning permission for "Extension of the existing mansard roof to create a full storey to match the building below and the erection of a new mansard roof above, together with the change of use of part of the ground floor accommodation at no. 14 from an office (Use Class B1(a)) to a café (Use Class A1/A3) and the change of use of the first, second, third, fourth and fifth floors of no.14 from officer (Use Class B1(a)) to 5 two bedroom flats and the use of the new roof level accommodation as 2 one bedroom flats; together with refuse and cycle storage at ground floor level" without complying with a condition attached to planning permission Ref 16/AP/1767, dated 2 June 2017.
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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 (the PPG) sets out that parties in planning appeals are expected to behave reasonably. It goes on to say that where a party has behaved unreasonably, and that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The applicant seeks a partial award of costs against the Council in relation to the first and sixth reasons for refusal. The applicant suggests that these reasons were vague, generalised or inaccurate, meeting the unreasonable test, and that as a result the applicant incurred unnecessary expense.
4. I agree with the applicant that the first reason for refusal was somewhat vague and generalised, particularly in relation to the actual changes proposed by the appeal proposal. I also note the Council's late acknowledgement that there would in fact be no increase in height as a result of the proposal. I consider that the unreasonableness of this approach was somewhat compounded by their conflation of the changes proposed in the application subject to this appeal with their views on the overall acceptability of the extant permission. This approach to the proposal and the decision notice was therefore unreasonable.

5. I consider that this led to wasted expense on behalf of the applicant, as they have had to clarify and explain the proposal, the decision notice and the relationship to the extant permission. This would not have been necessary had the first reason for refusal been clearer, or if the Council had acknowledged during their consideration of the application that there would be no increase in height as a result of the proposal.
6. However, I do not agree that the sixth reason for refusal was unacceptably or unreasonably vague. To my mind, that reason clearly and precisely related to the effect of changes to the extant permission on the existing, neighbouring flats on Disney Place. I consider that this was clear both from the decision notice and from the submissions of the Council. As such, that reason for refusal did not cause any unnecessary or wasted expense.

Conclusion

7. I therefore find that the Council has demonstrated behaviour, in relation to the first reason for refusal which could be considered unreasonable in the terms of the PPG, and which then resulted in unnecessary or wasted expense. The application for a partial award costs should therefore be allowed.

Costs Order

8. 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 Southwark shall pay to Mr Ian Ogilvie of Cyrus Homes Ltd, the costs of the appeal proceedings described in the heading of this decision, insofar as they relate to the overcoming the first reason for refusal, demonstrating that the proposal would not cause harm by way of increased height, mass and bulk. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the Council of the London Borough of Southwark, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S Dean

INSPECTOR