



Costs Decision

Site visit made on 20 October 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd October 2020

Costs application in relation to Appeal Ref: APP/A5270/W/20/3247513 193-199 Northfield Avenue, West Ealing, London W13 9QU

- 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 Peter House, Uses.co.uk Ltd T/A Car Care Ealing for a full award of costs against the Council of the London Borough of Ealing.
 - The appeal was against the refusal of planning permission for a single storey front extension to the rear workshop outbuilding to allow for the installation of a tandem MOT Inspection Bay.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour which may give rise to a substantive award of costs against a planning authority include not determining similar cases in a consistent manner and persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable.
4. The Council refused permission on the grounds of effects on neighbouring living conditions and the highway network. I do not doubt that these would have been relevant considerations when permission was granted for development on the appeal site previously. Nevertheless, each proposal must be considered on its own merits. That permission may have been granted for one proposal does not therefore establish that a different form of development would necessarily also be acceptable since this would depend on its particular circumstances and an assessment of its specific effects.
5. From the information before me, the earlier consents on the site relate to a different form and scale of development to the appeal proposal, and I have not been provided with details of any permission granted which includes built form to the same extent along the boundary with 1 Windermere Road, or enabling MOT tests on the site. While they are material considerations, the previous consents are not therefore directly comparable to the appeal proposal and their impacts, including on the highway network, can not be assumed to be the

- same. Accordingly, I do not find that the Council behaved inconsistently or irrationally in refusing permission for development which differs from that previously found to be acceptable, whether by the Council or on appeal, following consideration of the proposal and its specific impacts.
6. The Council's evidence recognises the planning history of the site, but goes on to clearly explain the reasons why it considered the proposal would harm the highway network and neighbouring living conditions through noise, disturbance and enclosure to the garden of 1 Windermere Road with appropriate reference to its specific effects. Although I have ultimately reached a different conclusion, I consider that the Council has adequately substantiated its position and was entitled to come to the view that it did.
 7. Loss of light was a concern raised by an interested party, but did not form part of the Council's reason for refusal which relates instead to enclosure. The fact that the applicant decided to submit a Daylight and Sunlight Report with the appeal does not therefore reflect unreasonable behaviour by the Council.
 8. For these reasons, I do not find that the Council has behaved unreasonably with regard to the substance of the matter under appeal. However, delay in providing information or other failure to adhere to deadlines is noted within the PPG as an example of unreasonable behaviour which may give rise to a procedural award of costs. In this case, the Council repeatedly failed to meet deadlines given for submission of the appeal questionnaire and documentation and issuing notification of the appeal to interested parties. The Council's response offers no explanation or extenuating circumstances for these failures which have prolonged the appeal process.
 9. I find in this regard that the Council has behaved unreasonably. However, for an award of costs to be granted, there must be evidence of both unreasonable behaviour *and* wasted or unnecessary expense. The PPG further confirms that costs unrelated to the appeal are ineligible, and that awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.
 10. I have considerable sympathy with the applicant's frustration over the delay to the progress of the appeal. Nevertheless, the evidence before me does not demonstrate how the delay has in this case resulted in unnecessary or wasted expense in the appeal process which would not otherwise have been required. Even if the Council had met the initially specified timescales, the applicant would still have incurred expense in reviewing and responding to its evidence. There may have been some extra work associated with requests for updates on the submission of information by the Council and progress of the appeal, but would seem to me to be of such limited scope as to be regarded 'de minimis'. I note there may have been a delay in obtaining planning permission and the applicant's concern over the impact of this on the business on the site, but as the PPG advises, that is not a matter for the costs regime.
 11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, for the reasons given above, the application for a full award of costs is refused.

J Bowyer

INSPECTOR