



Costs Decision

Site visit made on 7 January 2021

by Martin H Seddon BSc DipTP MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2021

Costs application in relation to Appeal Ref: APP/E5900/W/20/3255375 629-631 Roman Road, Bow, London E3 2RN

- 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 Cedargate Developments Limited for a full award of costs against the Council of the London Borough of Tower Hamlets.
 - The appeal was against the refusal of the Council to grant planning permission for erection of partial third floor to create a two bedroom flat.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The Council was provided with the opportunity to comment on the appellant's claim for an award of costs but failed to respond.
3. The appellant considers that the Council behaved unreasonably principally because it did not carry out an objective assessment of the application as set out in the Delegated Officer Report. The Guidance indicates that although costs can only be awarded in relation to unnecessary or wasted expense at appeal, behaviour, and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. The Guidance advises that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
5. The Council has not provided an explanation why the application was not determined within the time limits. The appellant has provided copies of correspondence with the Council. On 27 March 2020, the Council informed the appellant that it had carried out a preliminary assessment of the application and provided reasons why it was not in a position to support it. The appellant was advised that they may wish to withdraw the application, or the Council would proceed to refusal. On 30 March 2020, the appellant raised a number of issues which were responded to by the Council on 8 April 2020. The Council advised that unless withdrawn, it would proceed to a refusal given that the determination date had been reached, and that the applicant would have the

option of appealing the decision. However, the appellant responded on 9 April 2020 by saying that they would rather be able to come to an agreement and proposed a discussion after the Easter weekend.

6. It seems to me from the correspondence that the Council withheld refusing the application in view of the appellant's email of 9 April 2020. The appellant indicates that despite requests, nothing was received from the Council and the Council did not refer to the pandemic crisis as a reason for delay. I find that, although the Council has given no written explanation why it did not determine the application by the due date the evidence suggests to me that this was because the appellant requested further negotiation. In any event, I consider that the Guidance indicates that a Council may primarily be at risk of an award of costs against it in the circumstances of non-determination without specified reasons if an appeal is allowed, rather than dismissed. Having dismissed the appeal I consider that it is not appropriate to make an award of costs by reason of the Council preventing or delaying development which should clearly be permitted.
7. The appellant contends that the Council exhibited unreasonable behaviour by making vague, generalised, and inaccurate assertions about the impact of the proposal which were unsupported by any objective analysis. Also, that the Council has not determined similar cases in a consistent manner. Prior to the appeal the Council confirmed in the email correspondence that the appellant's submitted planning assessment and heritage assessment had been reviewed together with the Design Team. The issue of building heights and examples of other development in Roman Road was also responded to by the Council and is referred to in my appeal decision. Local planning authorities may also be liable for cost awards for not determining cases in a similar manner. However, each case must be assessed on its individual merits and the other schemes cited would not have involved proposals or site circumstances identical to those at the appeal site. I consider that the Planning Officer's report does provide sufficient detail regarding design and conservation matters to support its recommendation that planning permission would have been refused.
8. The Council did not act in an unreasonable manner in the appeal process and its behaviour and actions at the time of the planning application were not unreasonable enough to be given any significant weight in determining this costs decision. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Martin H Seddon

INSPECTOR