



Costs Decision

Site visit made on 15 December 2020

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2021

Costs application in relation to Appeal Ref: APP/K5600/W/19/3243179 Land rear of 61 Cambridge Gardens W10 6JD

- 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 Sitwell Investments Ltd for a partial and full award of costs against The Council of The Royal Borough of Kensington & Chelsea.
 - The appeal was against the refusal of planning permission for demolition of boundary walls and erection of a two storey commercial building, together with a first floor apartment with ground floor garaging.
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Decision

1. The application for a full award of costs is refused. The application for a partial 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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG also states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore, the PPG specifies 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.
3. The PPG indicates that costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, however, 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 applicant states that as, in their view, none of the reasons for refusal can be substantiated the Council should have approved the application in line with the professional assessment of officers and the recommendation to committee in the first instance and avoided the need for the appeal. As such, they consider that the Council have behaved unreasonably and caused unnecessary expense to be incurred.
5. Although the Council's planning officer recommended the application for approval, the planning committee was entitled to reach its own conclusion on the development proposal. Whilst the applicant disagrees with the decision,

whether or not a proposal would cause harm, and therefore fail to accord with the adopted development plan policy, is a matter of planning judgement. The Council committee discussed the recommendations of the Council Officer and, as they are entitled to do, reached an alternative judgement in accordance with the development plan. In addition, evidence to substantiate the reasons for refusal has been provided at appeal.

6. The applicant also suggests that the Council has taken an inconsistent approach to decision making on applications of this nature. However, each case must be treated on its own merits and whilst there may be some similarity, the particular details of any two cases are unlikely to be identical.
7. The applicant contends that the committee discussions and decisions regarding the first and second reasons for refusal were based on incorrect measurements. However, the Council state that the correct figures and information was presented in the drawings and in the committee report and was before the committee for them to consider when reaching their decision. Though I have been provided with the minutes of the committee meeting, no formal record detailing the measurements which were relied upon has been provided. I have no firm basis to confirm exactly what took place or whether the behaviour of the Council might have been unreasonable in this regard.
8. I note that the applicant considers the third reason for refusal, regarding the lack of a planning obligation to ensure new residents would not be entitled to apply for a parking permit, to be unfounded. However, whilst a signed unilateral undertaking has now been provided, such an agreement was not in place at the time of the Council's decision. In any event, the applicant's evidence in relation to this reason for refusal appears minimal and in the context of the wider appeal I do not believe the preparation of this element of the applicant's case has led to a demonstrable wasted expense.
9. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. As such, based on the evidence before me, in these matters I do not consider the Council behaved unreasonably. Moreover, unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, a full award of costs is not justified.
10. A partial award of costs has also been sought by the applicant in relation to the Council's first reason for refusal. This reason for refusal refers generally to the standard of residential accommodation which would be provided and states that the proposal would conflict with Policy CH3 of the Royal Borough of Kensington and Chelsea Local Plan, September 2019 (LP).
11. The Council's reason for refusal is supported by a development plan policy. This policy refers to both internal space provision and garden space and it could reasonably be interpreted that the Council had concerns regarding either, or both, of these considerations. Though brief, the minutes of the committee meeting which have been provided appear to indicate that concerns regarding the internal floorspace of the proposed flat were indeed discussed. The minutes contain no direct mention of discussions regarding the proposed garden space provision.

12. The applicant, based on the discussions at the committee meeting, interpreted the Council's refusal reason to mean that the Council's concerns are related to the internal floorspace of the proposed flat and accordingly submitted a considerable amount of evidence in this respect at appeal stage. However, the Council's appeal statement provides little evidence on this matter and instead suggests that their concerns relate to the provision of outdoor amenity space.
13. In my view, the Council's first reason for refusal lacked the clarity and precision required by Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to sufficiently explain the Council's decision. The scope of the reason for refusal is unclear particularly in regard to which element of the living conditions, the amount of floorspace within the property or the provision of outdoor garden space, the Council considered would not be satisfactory. In failing to set out a clear reason for refusal therefore, the Council behaved unreasonably. As a direct consequence, the applicant has incurred unnecessary and wasted expense in responding to whether or not the proposed flat would provide satisfactory living conditions in respect of internal floorspace.

Conclusion

14. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated in relation to the Council's first reason for refusal. For this reason, and having regard to all other matters raised, a partial award of costs is justified.

Costs Order

15. 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 Royal Borough of Kensington and Chelsea shall pay to Sitwell Investments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against whether or not the proposal would provide satisfactory living conditions for future occupiers in relation to internal floorspace.
16. The applicant is now invited to submit to The Council of The Royal Borough of Kensington and Chelsea, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

L J O'Brien

INSPECTOR