
Costs Decisions

Site visit made on 5 May 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2021

Costs application in relation to Appeal A Ref: APP/K5600/W/20/3260484 60 Hornton Street, London W8 4NU

- 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 Shahriar Tadjbakhsh for a full award of costs against The Council of The Royal Borough of Kensington & Chelsea.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission for revised tree planting proposals to those approved in the landscaping plan under reference CON/18/03676.
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Costs application in relation to Appeal B Ref: APP/K5600/W/20/3260502 60 Hornton Street, London W8 4NU

- 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 Shahriar Tadjbakhsh for a full award of costs against The Council of The Royal Borough of Kensington & Chelsea.
 - The appeal was against the refusal of planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal was against the refusal to grant a variation of a condition for planning permission for replacement dwelling house described as 'Variation of condition 2 (approved plans) of planning permission 16/03553 allowed under appeal ref: APP/K5600/W/17/3173181 to allow minor extension to basement; reduction in footprint of side and rear extensions at ground floor level; repositioning of light wells, front entrance and single parking bay at ground floor level and skylights to main roof; removal of brick shed to the corner of Pitt Street and Hornton Street; demolition and rebuilding of north-south wall between entrance and side garden; and enhanced landscape proposals' without complying with condition 4 attached to planning permission Ref PP/18/02198, dated 15 June 2018.
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Decision

1. In relation to appeal A - The application for an award of costs is refused.
2. In relation to appeal B - The application for an award of costs is refused.

Procedural Matters

3. There are two appeals on this site and a costs application is made in each case. However, given the consistency of the points made in relation to each case and in order to avoid duplication I have dealt with the two applications together, except where otherwise indicated.

Reasons

4. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
5. The applicant asserts that the Council did not provide a substantive reason to justify delaying the determination of either application beyond the statutory timescales and that consequently, it acted unreasonably. In addition, he contends that the Council's concerns were vague, generalised and inaccurate and that they failed to provide evidence to support their concerns regarding the tree species proposed. Finally, given that the Council did not object to a cultivated variety of the *Ginkgo biloba* they could have imposed a condition rather than reject the proposals.
6. PPG further states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. It goes on to say that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal, or rely upon vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. This is also the case where a refusal reason is capable of being addressed by conditions where it is concluded that suitable conditions would enable the proposed development to go ahead.
7. The Council accepts that it failed to make its decisions within the requisite time period, and it was not until some time after the respective deadlines had passed that both decisions were determined on 24 July 2020. However, it does describe circumstances which in part provides an explanation for the delay. The first wave of the Covid-19 pandemic necessitated Council staff to work from home on 17 March 2020. This unexpected development resulted in some technical difficulties which impaired the Council's ability to efficiently process planning applications. Additionally, staff illness because of the pandemic further reduced capacity. These factors contributed to a backlog of work that undermined timely decision making to such an extent that the Council's website carried a general apology to all applicants for the delays experienced.
8. The wide-ranging consequences arising in the initial stages of the pandemic were significant and unprecedented. Therefore, it would take some time for any organisation to adjust and this experience was not unique to the Council. The timing of the applicant's submissions coincided with the initial stages of the pandemic and therefore, some delay in determining the applications would be understandable.
9. It is highlighted that the Senior Arboricultural Officer's comments are dated 19 May 2020 some two weeks prior to the first application deadline. Even so, given the difficulties outlined affecting the Council at that time, Council staff would not necessarily have had the capacity to keep abreast of, or react to correspondence as might be anticipated under more normal circumstances. Likewise, their ability to keep individual applicants informed and updated would

have been compromised which is reinforced by the general message to applicants that was provided on the website.

10. The advice in the PPG that is highlighted by the applicant refers to appeals against non-determination. Although they were not determined within the prescribed period, the Council did not fail to determine the proposals before me. Furthermore, the email evidence provided by the Council indicates that some of the time beyond the statutory deadline but prior to the formal decisions, allowed for communication with the applicant to ascertain whether a compromise could be reached. In any event, this established that differences remained between the parties and so it is not shown that further communication would have enabled the appeals to be avoided altogether.
11. The applicant contends that the Council's behaviour reflects systematic negative bias established over a longer period. However, I have based my determination in relation to the appeal proposals before me. Overall, given the unusual circumstances, the Council's delay in determining the proposals did not amount to unreasonable behaviour.
12. The reasons for the refusal set out in the decision notices are reasonably specific and relevant to the respective applications and each one identifies which policies in the development plan the Council considered to be most relevant. These reasons were adequately substantiated by the Council in its officer report and further amplified in its appeal statement which outlined the nature of the harm that it considered would result from the species of trees proposed. This primarily required the exercise of judgement as to the suitability of the tree species for the space available. In doing so, the Council relied upon the opinion and experience of its arboricultural officers. Given their specific field of experience, it was not unreasonable to do so. Although it will be seen from my decision that I found the level of evidence provided by the applicant to be more persuasive, I am satisfied that the Council has shown that it was able to substantiate its reasons for refusal.
13. Although the Council indicated that a smaller cultivated variety of *Ginkgo biloba* would be acceptable, differences remained between the main parties regarding the suitability of the proposed *Robinia pseudoacacia*. Nevertheless, the reduction in the overall number and different species was presented as a complete scheme of new tree planting. Even if aspects of the proposals could have been made acceptable to the Council, taken in its entirety the Council had remaining concerns. It is not clear that parts of the document and planting plan presented were clearly severable and therefore, it is not shown how the imposition of a condition would have permitted the proposed development to proceed.
14. Furthermore, it will be seen from my determination that in relation to appeal A it was not possible to agree further landscaping details once the original permission had commenced. In any event, it was not open to the Council to impose further conditions given the limited scope of that procedure.
15. Overall, I cannot agree that the Council has acted unreasonably on procedural or substantive grounds. The central disagreement between the parties primarily related to the exercise of judgement and appeal B provided an

opportunity to test the planning judgement made by the Council. The applicant has not been put to unnecessary or wasted expense in doing so.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to either appeal.

Helen O'Connor

Inspector