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## Costs Decision

Site visit made on 19 July 2021

**by Chris Baxter BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 August 2021**

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### **Costs application in relation to Appeal Ref: APP/C5690/W/20/3252615 St Mildred's Church and Hall, St Mildred's Road, Lee, London SE12 0RA**

- 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 The Parochial Church Council (PCC) of the Ecclesiastical Parish of St. Mildred's, Lee for a full award of costs against London Borough of Lewisham.
  - The appeal was against the refusal of planning permission for demolition of church hall; erection of replacement church hall and community space with reordering proposals including solar panels to St. Mildred's Church; parking and associated works.
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### **Decision**

1. The application for an award of costs is allowed, in the terms set out below.

### **Reasons**

2. Paragraph 030 of 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.
3. Paragraphs 047 and 049 of the PPG states examples of unreasonable behaviour by local planning authorities in terms of procedural and substantive matters. These include lack of co-operation; delay in providing information or other failure to adhere to deadlines; providing information that is shown to be manifestly inaccurate or untrue; deliberately concealing relevant evidence at planning application stage or at subsequent appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions; failure to provide evidence to substantiate each reason for refusal on appeal; 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.
4. The appellant describes a number of matters relating to a lack of co-operation from the Council and failure to process application in an expeditious and proper manner. These include reversing the conclusions of the 2017 pre-application advice, delay in responses from the Conservation Officer, Tree Officer and Victorian Society as well as lack of communication from the Council on the detail of consultee comments, unsatisfactory site visits, and request for additional pre-application submission. The National Planning Policy Framework states that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Whilst the

Council have indicated that the responses from consultees were detailed in the committee report, the appellant had requested copies of objections and they should have been provided at the earliest convenience whether this was direct from the consultee or via the Councils Planning Case Officer. The Council have therefore acted unreasonably in this regard.

5. The appellant considers the site visits including the lack of an internal site inspection from the Conservation Officer to be unacceptable. It is for the Council and consultees to decide how best to undertake site visits as they would have the benefit of viewing the full application plans. The Council are also not duty bound to follow the advice given at pre-application stage however, it does appear to me to be inappropriate to request additional pre-application advice. Nevertheless, I do not consider any of these matters have resulted in unnecessary or wasted expense for the appellant in relation to this appeal.
6. From the evidence submitted, in particular emails provided by the Council, there does appear to be significant delays in the application being determined. I have no specific dates on the statutory time periods and I do note that the appellant had agreed to an extension of time. The Council's accusations with regards to the appellant approaching a Local Member appear to be unfounded as there is no evidence confirming this matter. So, whilst the Council appear to have erred in this regard, I do not feel that this would have resulted in a different outcome or prevented the appeal. I do not find that there has been unnecessary or wasted expense in this regard.
7. The appellant indicates that Council Officers have behaved unreasonably in how they briefed Committee Members resulting in the determination of the application based on incomplete and inaccurate information. The appellant explains they include disregarding design adjustments, errors in the committee report, misinformation to the Committee demonstrating a lack of understanding. Committee Members had access to all the submitted drawings and documents as well as the committee report, the addendum reports and consultee responses. The Committee Members had sufficient information in which to make an informed decision on the application and if they had any queries on the application details then these could have been brought to attention at the planning committee. I do not consider that the application decision was based on inaccurate or incomplete information.
8. It can be seen from my decision that I found that there was no harm to character and appearance, and trees. Nevertheless, such issues are subjective in manner and the Council's statement of case clearly discuss why the proposal is considered unacceptable in relation to character and appearance, trees and the development plan. Similarly, with the matter of planning conditions, the Council are not satisfied that the development could be brought forward with the use of appropriate planning conditions. In my decision, I discuss trepidations regarding tree T19 and whether suitable planning conditions could result in the tree being unaffected. I did however, come to a conclusion on this which differs from the Council and Tree Officers opinions. Thus, I am satisfied that the Council have provided evidence to substantiate each reason for refusal and that development has not been prevented which should have clearly been permitted. Whilst I came to a different conclusion on the main issues of the appeal, the Council have not acted unreasonably on these matters.

9. From the evidence before me, I consider that the Council, on the most, has acted reasonably. However, I have found that there has been a lack of co-operation from the Council and a failure to process the application in an expeditious and proper manner. This is primarily due to the lack of communication and co-operation with regards to consultee responses. Had the appellant had opportunity to digest the consultation responses at an early stage, then further amendments could have been made to the scheme or additional information provided that may have resulted in a different outcome, that may not have led to this appeal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

11. 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 London Borough of Lewisham shall pay to The Parochial Church Council (PCC) of the Ecclesiastical Parish of St. Mildred's, Lee the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Chris Baxter*

INSPECTOR