
Costs Decision

Site visit made on 23 June 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Costs application in relation to Appeal Ref: APP/K5600/C/20/3259399 402-416 King's Road, London SW10 0LJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms Shabina Khanam for a full award of costs against The Council of The Royal Borough of Kensington & Chelsea.
 - The appeal was against an enforcement notice alleging the carrying out of development purportedly pursuant to lapsed planning permission (ref: PP/13/04914 / APP/K5600/A/13/2210626).
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Decision

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

Reasons

2. The Planning Practice 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. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. Local authorities are at risk of an award of costs if they behave unreasonably with respect to the actual substance of the matter under appeal, or by unreasonably defending appeals. Examples include preventing or delaying development that should clearly be permitted, or acting contrary to, or not following established law. Unreasonable behaviour can be either substantive, relating to the issues arising from the merits of a case or procedural, relating to process, in nature. In addition "unreasonable" is used in its ordinary meaning as established by the courts¹ and not in the stricter law definition of "Wednesbury" unreasonable.
4. The appellant contends that the Council behaved unreasonably because there is an extant planning permission for the development of the site. It is further contended that there has been no breach of planning control because the Council has stated that condition 16 of the permission cannot be considered to be a pre-commencement condition as the works need to start to enable the requirements of the condition to be satisfied.
5. As set out in the main decision, between September 2015 and December 2017 conditions 3, 7, 8, 9, 10, 14 and 17 of permission PP/13/04914 / APP/K5600/A/13/2210626 were discharged by the Council. The 18 December

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

2017 decision to discharge condition 14 states that, with regard to condition 15, a sufficient site investigation and quantitative risk assessment with the remediation method statement will be required to discharge condition 15 in order to ensure that the decision-making process that led to the remediation strategy is clearly set out and accords with the development plan. The decision also states that condition 16 (verification report) cannot be discharged as a prior to commencement condition and it is recommended that advice be sought in amending the condition to prior to occupation before development works commence on site. Therefore, it is common ground that condition 16 cannot be dealt with as a pre-commencement condition.

6. However, the Preliminary Risk Assessment Report discharged pursuant to condition 14 identified potential contamination within the appeal site and condition 15 specifically states that in such circumstances *"no development shall take place until a Remediation Method Statement to address the results of the Preliminary Risk Assessment Report/Site Investigation Scheme has been submitted to, and approved in writing by, the local planning authority"*. Consequently, condition 15 is a true precedent condition which in my judgement goes to the heart of the permission. At the time the enforcement notice was served condition 15 had not been discharged and material operations purportedly pursuant to the lapsed planning permission had clearly taken place. Therefore, the permission was no longer extant and a breach of planning control had occurred.
7. In these circumstances it was entirely reasonable for the Council to take enforcement action and I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

A A Phillips

INSPECTOR