



Costs Decision

Site visit made on 22 June 2021

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2021

Costs application in relation to Appeal Ref: APP/A5840/W/20/3265337 63-65 Old Kent Road, London SE1 4SR

- 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 Canterbury Properties Ltd for a full award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of the existing building and the erection of a five storey building with a basement to provide flexible commercial use on the ground floor and basement and 9 self-contained residential units (1 x one bed, 1 x two bed and 7 studio units) on the upper floors with associated refuse storage, cycle storage and landscaping works.
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Decision

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

Reasons

2. 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 therefore caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant's grounds are (a) that the Council has acted unreasonably in its failure to determine the planning application even with agreements for extension of time, and (b) that the Council have not demonstrated actual tangible harm from the development, but have used subjective and unsubstantiated reasons, without a full explanation as to any weight given in the planning balance.
4. The application was submitted with several supporting documents prepared by professional persons. The proposal was amended in response to comments made by the Council and by interested parties to make improvements. But there were substantial delays in obtaining Council comments, particularly in the earlier stages of the process. It will be evident from the main decision that I consider the proposal to be acceptable in planning terms, but an award of costs relates to unreasonable behaviour in the appeal process.
5. PPG¹ states, "*Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process*". Furthermore, that "*Examples of*

¹ Paragraph: 047 Reference ID: 16-047-20140306

unreasonable behaviour which may result in an award of costs include: lack of co-operation with the other party or parties” and “delay in providing information or other failure to adhere to deadlines”. In this appeal, there was a delay in the Council dispatching the appeal questionnaire, the Council did not prepare a report or statement on the proposal (contrary to information on the questionnaire) and the Council only submitted a list of conditions (in the event that the appeal is allowed) at my request long after the deadline for this. I gather that there are some extenuating circumstances in relation to staff sickness, but it behoves the Council to have systems in place whereby it can reasonably respond to its appeal obligations.

6. PPG² also states, *“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. 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”.* The Council have not explained their reason for non-determination or their reasons why the application should not have been granted had it been determined.
7. Councils are also at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. An example given in PPG³ is *“not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination)”.* The Council has been silent in relation to the proposal’s planning merits in contesting the appeal.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified in relation to the applicant’s expenses in preparing the appeal statement, the appendices to the statement and in commenting on suggested planning conditions.

Costs Order

9. 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 London Borough of Southwark Council shall pay to Canterbury Properties Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the appeal. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.
10. 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.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR

² Paragraph: 048 Reference ID: 16-048-20140306

³ Paragraph: 049 Reference ID: 16-049-20140306