
Costs Decision

Site visit made on 24 November 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2022

Costs application in relation to Appeal Ref: APP/A5840/W/21/3279306 20-22 Camberwell Church Street, London SE5 8QU

- 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 Yucca Garden for a full award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the refusal of planning permission for demolition of existing garden structures and replacement with a new timber shelter.
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Decision

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

Reasons

2. Planning Practice Guidance 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 claim is that the Council has behaved unreasonably resulting in wasted expense in (1) a consultant having to be appointed to prepare the appeal on a planning application that should have been approved, (2) delays in determining that application and (3) disregarding the findings of the noise impact report and the recommendation of the Council's Environmental Protection Team on a planning condition in relation to that report.
4. The appeal application addressed the refusal reason on a previous application through the submission of a noise report and the initial recommendation was to grant permission. The applicant contends it was unreasonable for the Council to have accepted a late objection and to have refused the application following a site visit attended by enforcement and licensing officers but without the planning case officer present. It is for the Council to decide on procedures in processing planning applications. The initial recommendation to approve was not binding, but the Council's decisions should be made on robust planning grounds. The Council had obligations to investigate an alleged unauthorised change of use and to respond to coronavirus pandemic precautions operating at that time.
5. It appears likely that these matters contributed to the delay in determining the application. The initial favourable assessment would also have been a disincentive to appeal against non-determination. But the delay did not result in any additional costs. The shelter already existed, and in the meantime could be used in association with the applicant's business.

6. Moreover, an award of cost has to relate to unreasonable behaviour in the appeal process rather than the application process. It will be evident from the main decision that I have found the Council's decision to be sound and not unreasonably made thereby necessitating the appeal.
7. The Council's report clearly noted the findings of the noise impact report and the recommendation of the Environmental Protection Team for a planning condition that would appear to mitigate late evening noise impacts. However, it is entirely proper for the final planning assessment to weigh the findings of all consultation replies and also to assess the merits of the suggested condition against the tests for planning conditions. The suggested condition's suitability to the site circumstances is a matter of planning judgement. The rejection of the condition, which might otherwise have enabled a decision to have been taken to grant permission, does not amount to unreasonable behaviour.

Conclusion

8. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in Planning Practice Guidance, has not been demonstrated. The application should not succeed.

Rory MacLeod

INSPECTOR