
Costs Decision

Site visit made on 17 January 2022

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2022

Costs application in relation to Appeal Ref: APP/A5840/W/21/3276227 28 Nunhead Green, London SE15 3QF

- 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 M Johnson of Cantel Developments for a partial award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the refusal of planning permission for a change of use of the rear part of an existing bar 'El Vermut' (Class Sui Generis) to residential floorspace (Class C3) together with a rear extension at first floor to create a new 1 bed maisonette.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) 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.
3. The application for an award of costs relates to the first and fourth reasons for refusal of planning permission.
4. Reason for refusal one clearly identifies the harm which the Council considers would arise from the development, and the Officer Report assesses the scheme against several development plan policies. The applicant contends that the Council did not properly take into account the submitted evidence, including the letter from the current proprietors, in forming a balanced view on the application. However, that letter is specifically referred to in the Officer Report; the Council found that the points raised in the letter did not provide sufficient justification for the proposal.
5. I consider that there was reasonable scope for alternative viewpoints to be held in relation to this matter and the Council raised legitimate concerns in an adequate manner. I have reached the same conclusion as the Council regarding this matter. That does not vindicate any procedure or reasoning on their part. However, it establishes that it is not the case that planning permission should clearly have been granted. Accordingly the Council did not act unreasonably in relation to this issue.
6. The fourth reason for refusal relates to the effect of the proposed extension and terrace on the outlook of the neighbouring occupier of the first floor flat.

An element of judgement is required in making a planning decision where its effect on neighbours is at issue. In the Officer Report, the Council sets out its reasoning for finding harm in respect of the outlook from the neighbour's rear facing window. Given that there was some uncertainty around what type of room this window serves, the Council was entitled to make its own planning judgement based on the information before it and it did not fail to substantiate its position. Consequently, the Council did not act unreasonably in this regard.

7. Based on the evidence, I am satisfied that the Officer Report shows that an analysis of the merits of the proposal was undertaken with regard to the specific circumstances of the site and the development plan. The Council's decision stands scrutiny relative to the statutory approach to decision-taking. The dispute was a matter of planning judgement, rather than the applicant being forced into an appeal by consequence of unreasonable behaviour. It therefore follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. The evidence does not justify a partial or full award of costs. The application for an award of costs is refused.

M Ollerenshaw

INSPECTOR