



Costs Decision

Site visit made on 19th May 2022

by Megan Thomas Q.C. Barrister-at-Law

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 16th June 2022

Costs Decision in relation to Appeal Ref: APP/E5330/W/21/3285005 27A Herbert Road, Woolwich SE18 3TB

- 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 Mrs Achurch for a full application of costs against the Royal Borough of Greenwich Council.
 - The appeal relates to the refusal of planning permission for the "erection of two additional storeys to the existing single storey building comprising 1 x 2 bedroom apartment."
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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.
3. Only the unnecessary or wasted costs of the appeal itself can be recovered by an award.
4. The appellant refers to a number of grounds as a basis for her costs application. One of those is that the approval of the planning application at 29 Herbert Road was unlawful and the implication is that her planning application would have been granted by the Council if the 29 Herbert Road Development had not been given planning permission. However, I am obliged to treat the 29 Herbert Road Development as lawful unless it has been quashed by the High Court or revoked by the Council under the Town and Country Planning Act 1990. There is nothing before me to indicate that either of those actions has occurred and so this costs ground is not made out.
5. The appellant also relies on the delayed determination of the planning application by the Council beyond statutory timescales and the implication is that if it had been determined before the 25-27 Herbert Road Development planning permission had been granted then her application would have been granted by the Council. However, there is no certainty that that would have been the case. The Council's reasons for refusing her application relate to harmful living conditions for the occupants of 29 Herbert Road primarily as a result of the impacts of her proposal. The grant of permission for the 25-27 Herbert Road Development did not cause the Council to refuse her planning

application. The latter was not axiomatic. Furthermore, there is insufficient evidence before me to persuade me that the case officer decided to change his stance from support to opposition to the appellant's application owing to the grant of permission for the 25-27 Herbert Road Development.

6. Further, she refers to her revised drawings (submitted in February 2021) as being expressly submitted as draft drawings but nevertheless being used as the basis for re-consultation and then determination of her application. This, she says, was contrary to an agreed approach. She does not explain how this has led to wasted costs in the appeal process but the implication is that she could have submitted further revised drawings having had comments from the Officers and this might have led to her application eventually being granted by the Council. However, there is no certainty that a further set of drawings revealing an, as yet, unconfigured scheme would have led to the Council granting permission. It is not possible for the appellant to assert with certainty that she would have avoided an appeal because the Council would have granted her a planning permission.
7. Notwithstanding that, the Council's offer was to look at "revised drawings" in its email dated 24 December 2020 and not to look at draft revised drawings. Whilst there was no Zoom meeting with the appellant's architects as promised, the appellant was given feedback on the draft revised drawings by email on 29 March 2021 and was given the opportunity to withdraw the application. I do not consider the Council's conduct can be categorised as unreasonable and, independently of that, it has not, in any event, led to there being an appeal which would otherwise not have been necessary. Related to this the appellant makes the point that the Council determined the planning application using Daylight and Sunlight assessments which related to a previous iteration of the scheme, however, given that the Council has assessed the appeal proposal against an updated Daylight and Sunlight assessment (31 August 2021) and found it to be unacceptably harmful to residential neighbours, the appeal would not have been avoided in any event. This point does not lead me to conclude that appeal costs have been wasted or unnecessary.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Megan Thomas Q.C.

INSPECTOR