
Costs Decision

Site visit made on 5 May 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 July 2022

Costs application in relation to Appeal Ref: APP/A5840/W/21/3280523 138 Rye Lane, London SE15 4RZ

- 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 Miss Olga Zajac 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 'Retrospective permission for café/bar (Use Class A3/A4) over ground and first floor with ancillary manager's accommodation at second floor, and new shopfront and bi-fold doors at rear (ground floor); Hours of operation Su-Th 06:30 to 00:00, F and Sa 06:30 to 01:00 (next day)'.
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Decision

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

Reasons

2. Paragraph 30 of the National Planning Practice Guidance (NPPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and where that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 49 of the NPPG makes it clear that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, and also with respect to the substance of the matter under appeal.
4. The appellant argues that the Council failed to have proper regard to the previous appeal decision ref: APP/A5840/W/20/3252179. The Council make reference to the appeal decision and have taken note that the quality of the manager's accommodation could be dealt with by way of condition. As a result, they did not raise this as an issue under the current appeal.
5. The previous appeal decision found that the fire safety issues could be dealt with through the Building Regulations requirements. However, with respect to this matter, the Council have explained their position with reference to Policy D12 of the London Plan 2021. As the previous appeal decision predates the London Plan 2021, this lessens the weight that can be given to its findings on fire safety. I therefore find no unreasonable behaviour on the part of the Council in revisiting this issue in light of the changed policy context.
6. The appellant argues that the Council have failed to consider conditions that would make the development acceptable. As may be seen from my main decision, I have found that a suitably worded condition with regard to fire

safety could address this element of the case. The appellant has indicated that she would be willing to submit a Fire Risk Assessment and evacuation plan if the development had been found to be acceptable in other regards. However, as this work does not appear to have been undertaken, there is little evidence that any significant expense relating to this issue has been accrued.

7. However, I have found that the matters of noise and disturbance cannot be dealt with by condition for the reasons I have given. There is little evidence that the Council did not consider these conditions, and the fact that they reached a different view on the merits of the appellant's arguments does not amount to unreasonable behaviour.
8. The appellant also states that the Council failed to engage over the issues prior to submission following the previous appeal decision to inform the revised application. However, she does not elaborate on how, specifically, this may have led to unnecessary or wasted expense.
9. The reasons for refusal set out in the decision notice clearly state the concerns regarding the development. It was necessary for the appellant to address those concerns, and so the appeal could not have been avoided. Any expenses relating to the appellant's evidence on noise and ventilation were necessary in order for those matters to be assessed within the appeal. As may be seen from my own decision, I agreed with the Council's overall conclusion in respect of impact on living conditions, and dismissed the appeal on similar grounds.

Conclusion

10. I therefore find that it has not been demonstrated that there has been unreasonable behaviour that has caused unnecessary or wasted expense on the part of the appellant, as described in the Planning Practice Guidance. As a result, no award is made.

Elaine Gray

INSPECTOR