Costs Decision

Site visit made on 19 October 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 14 November 2022

Costs application in relation to Appeal Ref: APP/Z5630/W/22/3295062
177 Kings Road, Kingston Upon Thames KT2 5JG

- 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 Doogle Holdings Ltd for a full award of costs against Royal Borough of Kingston Upon Thames.
- The appeal was against refusal of permission for change of use of rear first floor from ancillary Use Class A1 (retail) to C3 (dwellings), together with remodelling including second floor extension to create two maisonettes (2 x 1B2P) with associated landscaped communal amenity space, cycle store and bin stores.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. In this instance, the applicant alleges that the Council's determination of the appeal application was flawed, and that it behaved unreasonably with regard to matters which go to the substance of the case.

3. The appeal application was refused for four separate reasons. As set out in the appeal decision, my conclusions regarding the effect of the development on the living conditions of the neighbouring occupiers of nos. 2 and 4 Staunton Road reflected those of the Council. This reason for refusal was therefore wholly justified.

4. The first reason for refusal concerned loss of employment space. Given that Policy DM17 of the Council's Core Strategy (2012) explicitly requires the Council's stock of employment space to be protected, it was reasonable for the Council to conclude that the proposed loss of employment space would be unacceptable.

5. In terms of the potential fallback scheme, I gave this greater weight than the Council, which ultimately led me to a different conclusion on this issue. Nonetheless, it is for the decision maker to determine the weight to be ascribed to a potential fallback. In this instance, given the current state of repair of the existing building, it was not unreasonable for the Council to conclude that the fallback scheme was unlikely to be implemented, and therefore ascribe it less weight in its planning balance.

6. The Council's third reason for refusal related to internal and external space provision. In terms of internal space, it is understood that cross-sectional drawings had not been submitted during the course of the original application, to demonstrate that the prescribed ceiling height standards would be met within the new dwellings. Whilst the Council could have requested this information, given it was refusing the application on other grounds, it was reasonable for this lack of information to be included as a reason for refusal. As for external space, the provision of amenity space would fall short of the minimum requirements when assessed against guidance in the Council's Residential Design SPD (2013). Whilst ultimately, I found in favour of the applicant with regard to this issue, it was therefore entirely reasonably for the Council to conclude differently.

7. The final reason for refusal concerned a lack of planning obligation to secure car free development. Whilst the applicant submitted a unilateral undertaking as part of the appeal to overcome this reason, this agreement had not been provided during determination of the original appeal application. The reason for refusal was therefore justified at the time the appeal application was originally determined.

8. Reference has also been made to pre-application discussions, during which a more favourable outcome to the appeal application was initially intimated by the Council. Nonetheless, such discussions are not binding, and are intended as guidance only. In itself, this conduct would not constitute unreasonable behaviour for which a costs award would be justified.

9. On this basis, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in this instance.

James Blackwell

INSPECTOR