
Costs Decision

Hearing Held on 5 October 2022

Site visit made on 5 October 2022

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2022

Costs application in relation to Appeal Ref: APP/P5870/W/22/3301306 Northumberland House, Brighton Road, Sutton SM2 5AJ

- 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 Northumberland Freehold Ltd for a full award of costs against the Council of the London Borough of Sutton.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of two additional storeys to the main block, one additional storey to the western block and an infill extension to the undercroft, to provide 39 additional self contained residential units, additional cycle spaces/storage and a reduction in parking spaces.
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Decision

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

The submissions for Northumberland Freehold Ltd

2. The applicant claims that the Council altered its opinion between pre-application and application stage, specifically with regards to design and the positioning of the proposed windows not matching those of the existing building.
3. Furthermore, the appellant claims that the Council introduced late evidence regarding heritage matters that were not referred to in the appeal questionnaire and did not engage co-operatively with discussions regarding the application.

The response by the London Borough of Sutton

4. The Council refute the applicant's claims, stating that the pre-application advice does not specifically offer any "assurance on the size or alignment of windows" and with regards co-operation, reference is made to consistent engagement between the two parties.

Reasons

5. 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.
6. Pre-application advice is not binding upon the Council, nonetheless specific reference to the non-alignment of the proposed and existing windows and the

reasons for it, is specifically referred to in the pre-application response from the Council. While the non-alignment of the windows is neither specifically accepted nor rejected, it is still concluded that the proposals would comply with the relevant design policy of the Local Plan.

7. the applicant has referred to Costs Decision APP/P0240/W/18/3210480 dated 16th July 2019, where in that instance the Inspector found the Council had acted unreasonably by taking a different stance from pre application advice when determining the appeal. In that instance no particular reasoning was offered other than a change in personal.
8. The Council have referred to the later submission of additional information and additional detail with an application, as justification for what appears to be a change in position. While such a change in opinion is understandably frustrating for the applicant, the submission of additional information and detailed information is reasonable justification for such a change.
9. The applicant also made reference to heritage matters raised at the appeal which "hadn't previously been identified as a relevant planning consideration during pre-application dialogue, nor during the application determination period, nor within the LPA's Appeal Questionnaire".
10. That the site lies outside of but adjacent to the Conservation area and near to a number of locally and statutorily listed properties is a matter of fact and this should have been apparent to the applicant when preparing the planning application. I do not find that the reference to heritage matters at the appeal to amount to unreasonable behaviour.
11. Turning to the discussions between the parties while the application was with the Council, it is clear that there were discussions and repeated submissions of additional information and revised plans that were fundamental to matters at dispute between the parties. Therefore, while the discussions were over an extended period of time where it may have been better to either have withdrawn or determined the application, nonetheless the evidence before me does not demonstrate that the council acted unreasonably either in the consideration of the application or at the appeal.

Conclusion

12. I conclude therefore that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

Mr M Brooker

INSPECTOR