



Costs Decision

Site visit made on 3 January 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2023

Costs application in relation to Appeal Ref: APP/D1780/W/22/3305202 198 Burgess Road, Southampton SO16 3AY

- 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 Southampton City Council for a full award of costs against Mr Heman Sahid.
 - The appeal was against the refusal for planning permission for new staircase enclosures to external seating area, enclosed with canopy roof & fence panels with grass netting, extend restaurant into former fish market with new toilets & access to first floor bedsit.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG), at paragraph 030, 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. Examples include:
 - amending the appeal scheme through the appeal process, necessitating extra expense for work that would not otherwise have arisen;
 - providing information that is shown to be misleading; and
 - failing to provide substantive evidence as part of the appeal to address the Council's reasons for refusal.
3. The appellant submitted amended plans with their statement of case. As set out in Annex M of the Procedural Guide Appeals – England the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested party's views were sought. Whilst I have not considered them during the determination of the appeal, it is a matter for the Inspector as to whether to accept information submitted during the course of the appeal. Therefore, I do not consider seeking to address the Council's concerns with the amended proposals constitutes unreasonable behaviour.
4. The Council contends that the appellant has provided misleading evidence of ownership during the application and appeal processes and, as a result, has acted unreasonably. However, clarification of the ownership of the majority of the appeal site has been provided as part of the appeal. Regardless, as it has

not affected the findings on the main issues, I do not consider this to be unreasonable behaviour.

5. The evidence before me indicates that the appellant was made aware of the concerns of the Council in respect of the appeal scheme, from both a Pre-Application Report¹ and the Decision Notice. On both documents the significant concerns in respect of the proposed development were set out, with reference to both national and local planning policy. In both instances the Council confirmed it would not support the development as proposed and that the works already undertaken without the required planning consent had been done so at the appellant's own risk.
6. Whilst the appellant did not sufficiently address the concerns of the Council, as set out in the Pre-Application Report, within the application plans, as the concerns relate to matters of judgement, it is not unreasonable for the appellant to put forward their case. Similarly, although I do not agree with the appellants statement, a case has been forward. This is not unreasonable behaviour.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Juliet Rogers

INSPECTOR

¹ Ref 21/01358/PREAP2 – October 2022