
Costs Decision

Site visit made on 14 February 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2023

Costs application in relation to Appeal Ref: APP/H5390/D/22/3302047 10 Weltje Road. Hammersmith and Fulham, London W6 9TG

- 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 Mr Edward Evans for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - The appeal was against the refusal of planning permission for the erection of a cycle store, and erection of a refuse/recycling store in the front garden.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. In claiming the costs of the appeal, the applicant submits that the Council has acted unreasonably both in procedural and substantive terms. Procedurally, it is asserted that the Council's actions have caused delay to the provision of the store sought and that they have been uncooperative throughout the planning process. In substantive terms, the applicant considers the Council to have applied policy illogically, disproportionately and inconsistently.
4. PPG gives further advice as to when local planning authorities will be at risk of an award being made against them. The examples listed as unreasonable behaviour on procedural grounds include a lack of co-operation with the other party and delay in providing information or other failure to adhere to deadlines. Examples cited as unreasonable behaviour on a substantive basis refer to preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, and not determining similar cases in a consistent manner.
5. The evidence before me does not show that the Council delayed providing information or failed to adhere to deadlines. Rather, the applicant points to delays in the appeal process generally due to post pandemic backlogs, with no suggestion that these were in the control of the Local Planning Authority. Whilst I appreciate the situation may have caused frustration to the applicant, the circumstances fall considerably short of demonstrating that the Council caused procedural delays due to their unreasonable behaviour.

6. Moreover, I have seen little evidence to show that the Council have been unhelpful or uncooperative. I recognise that the applicant disagrees strongly with their planning decision, but this does not intrinsically amount to uncooperative behaviour. Overall, I do not find that the Council has acted unreasonably on procedural grounds.
7. The Council produced a planning report which considered the proposal against development plan policies, national policy and other considerations. This articulated the Council's concerns, identified areas of conflict against specific policies, and summarised these in the reason for refusal. Having found harm to the conservation area, the report shows that some consideration was given to beneficial aspects of the scheme, including the green roof and cycling. Nevertheless, the Council did not consider these factors outweighed the harm they identified.
8. Ultimately, the decision in this case called for a judgement to be made as to the significance of the conservation area in question, and whether the proposal would cause harm to it. In matters of judgement pertaining to the qualitative aspects of an area, it is rarely the case that there can be only one plausible judgement. Although I did not share their conclusions, I am satisfied that the Council gave a reasoned assessment for their decision, and it was not unreasonable for them to have found otherwise.
9. The Council went on to distinguish the garden store permitted at 6 Weltje Road on the basis that weight was attributed to the personal circumstances of the applicant in that case, pointing to conditions that limited the extent of the permission. Such an approach would be generally consistent with their overall finding of harm to the CA, but in that case, they found other factors that outweighed the harm. They also pointed to recent appeal decisions which they considered reinforced their approach.
10. The presence of similar garden stores to the appeal proposal were drawn to my attention, and I had regard to their presence as part of my determination on the merits of the proposal. Nevertheless, the limited photographic evidence before me does not comprehensively establish when, how or even if planning permission was granted in each instance. Hence, I am not persuaded that it has been conclusively shown that the Council has failed to determine similar cases in a consistent manner.
11. Therefore, I do not consider that unreasonable behaviour has been demonstrated within the meaning of the PPG on either procedural or substantive grounds. It follows that the applicant was not put to unnecessary or wasted expense in testing the Council's judgement at appeal.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for an award of costs is refused.

Helen O'Connor

Inspector