
Costs Decision

Site visit made on 1 August 2023

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Costs application in relation to Appeal Ref: APP/A5270/W/22/3312622 Land to the rear of No. 8-12 South Road, Southall, Ealing, London UB1 1RT

- 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 Pal Singh (Blackstone City Ltd) for a full award of costs against the Council of the London Borough of Ealing.
 - The appeal was against the refusal of the Council to grant planning permission for development described as "erection of a two-storey building to provide hostel accommodation for use by extended family members or associates of the local community on a short-term basis (Sui Generis)".
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either procedural, having regard to behaviour in relation to completing the appeal process, or substantive, relating to the planning merits of the appeal. The applicant is seeking a full award of costs on procedural and substantive grounds.

Procedural

4. The applicant's claim on procedural grounds largely relates to the Council's behaviour during the determination of the planning application, particularly in regard to the length of time taken to process the planning application, failure to provide timely feedback to the applicant during the application determination period, and failure to determine the application on the basis of revised plans and additional information submitted to the Council prior to the decision being made.
5. Procedurally, in regard to the appeal process, the applicant refers to the Council's failure to provide an Appeal Statement and list of Suggested Conditions.

6. Whilst the Guidance states that costs cannot be claimed for the period during the determination of the planning application, it advises that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded, and that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.
7. I appreciate the applicant's frustration in respect of the time the Council has taken to respond to emails from the applicant's agent during the course of the application, and that the application was refused on the basis of the originally submitted plans. However, I note that the Council had confirmed that it was unable to support the revised proposal, and that it offered the applicant the opportunity to withdraw the planning application prior to issuing its decision.
8. I also find no substantive evidence that the applicant incurred any additional expense as a result of the time taken to determine the application, and I note that the delay occurred on the basis of a refusal of planning permission and not non-determination.
9. Whilst the communication process with the Council must have caused the applicant some concern, and I appreciate that the outcome of the application will have been a disappointment to the applicant, I find nothing to suggest that a decision was not reached on the merits of the proposal as originally submitted by the applicant.
10. As such, I do not find that the Council acted unreasonably having regard to procedural matters during the course of the planning application process. In coming to this view, I am also mindful that the applicant did not seek pre-application advice from the Council, as advocated in the *National Planning Policy Framework 2021*. I have also taken account of the unprecedented impact on the work environment following on from Covid-19.
11. Moreover, my Decision, which accompanies this costs decision, explains why I have dismissed the appeal. As such, the delay in determination has not resulted in an appeal which could have been avoided altogether.
12. In my recent experience I have found that it is not uncommon practice for Council's to rely upon the Officer Report in lieu of the submission of an Appeal Statement. In this instance, I have found that this was sufficient to adequately substantiate the Council's reasons for refusal.
13. The 'Drawings/Schedules References' on the decision notice confirm the information upon which the Council based its decision, with the detailed plan references and Design and Access Statement date confirming that the originally submitted documents were those upon which the decision was made. Moreover, it is evident from the Officer Report that this was the information that formed the basis of the Council's decision, so I do not consider that there has been any confusion at the appeal stage in this respect.
14. Had I been minded to allow the appeal, I would have sought Suggested Conditions from the Council, and invited the applicant's comments upon them. However, having regard to my conclusion in respect of the first and third main issues, this was not considered necessary, as it would not have altered the

outcome of the appeal and would have led to unnecessary delay in issuing the decision.

Substantive

15. The applicant considers that the Council has failed to provide adequate evidence to support its decision, including failing to provide an Appeal Statement, making inaccurate and vague assertions in respect of the proposal and its impact upon the surrounding area and the living conditions of neighbours and future occupiers, and referring to irrelevant development plan policies and imprecise Framework references within the reasons for refusal.
16. It will be seen from my Decision, that I do not agree with the Council's conclusions in respect of the impact of the scheme upon the living conditions of neighbours and future occupiers. However, and notwithstanding the recent construction of a building in the rear garden of 1 Herbert Road, I find that the Council's stated reasons for refusal as set out in the Officer Report and decision notice to be complete, precise, specific and relevant to the application.
17. My accompanying Decision confirms why I have found some development plan policies referred to in the Council's reasons for refusal not to be directly relevant to the issues under consideration. Moreover, I acknowledge that the references to the Framework within the decision notice are not precise.
18. However, the refusal reasons do include development plan policies which are clearly relevant to the determination of the application and appeal, including those against which the Council considers the proposal would be in conflict.
19. Moreover, I am not persuaded that the inclusion of some irrelevant policies by the Council, or a failure to precisely refer to one of the key aims of the Framework of achieving well-designed places, would have resulted in unreasonable behaviour leading to unnecessary or wasted expense for the applicant. In coming to this view, I have had regard to the fact that the applicant was professionally represented during the appeal process, so that such policy references would reasonably be easily understood, without the need for unnecessary costly additional work.

Conclusion

20. Having regard to the above, I find that the Council was entitled to refuse the application and defend the appeal and has not acted unreasonably in so doing.
21. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

S Leonard

INSPECTOR