



Costs Decision

Site visit made on 31 October 2023

by A Caines BSc (Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th December 2023

Costs application in relation to Appeal Ref: APP/K5600/W/23/3325117 84 Abingdon Villas, London W8 6XB

- 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 Mrs Zahra Fathi for a full award of costs against the Council of the Royal Borough of Kensington and Chelsea.
 - The appeal was against the refusal of planning permission for roof extension with reconfiguration of front fenestration; introduction of pillar detail on the left-hand side; introduction of an additional glazed door for access from the street matching the existing style to an existing commercial premises.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The PPG makes it clear that a local planning authority may be at risk of a substantive award of costs if it fails to substantiate its reasons for refusal at appeal, and/or makes vague generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The Council, or more specifically its Planning Committee, refused the planning application against officer advice. Whilst a planning committee is entitled to make decisions that are contrary to the officer recommendation, there is an expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects.
5. The sole reason for refusal alleged that the proposal would remove the important transition in height between buildings in Abingdon Villas and Earls Court Road and would harm the conservation area as a result.
6. However, for the reasons set out in my appeal Decision, I have concluded that the proposal would not remove any important height transition between the buildings and overall, would enhance the character and appearance of the host building, street scene, and the conservation area. Whilst there is an element of judgement involved, the Council has shown no respectable basis for the stance taken by its Planning Committee. Rather, I consider that its concerns were grossly exaggerated, bearing little relation to the small scale of the height increase involved.

7. I therefore consider that the Council's refusal was not well founded, containing vague and generalised assertions about the proposal's impact, with the result that the Council has been unable to substantiate its refusal reasons at appeal.
8. Accordingly, I am of the view that unreasonable behaviour described in the PPG has been demonstrated on the part of the Council, and has resulted in the applicant's unnecessary expense in contesting the appeal. A full award of costs is therefore warranted.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the Royal Borough of Kensington and Chelsea shall pay to Mrs Zahra Fathi, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the Council of the Royal Borough of Kensington and Chelsea, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Caines

INSPECTOR