



Costs Decision

Site visit made on 15 August 2023

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th March 2024

Costs application in relation to Appeal Ref: APP/K5600/W/23/3315061 Basement, 4A Campden Street, London, W8 7EP

- 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 Airspace UK Ltd for a full award of costs against Royal Borough of Kensington and Chelsea.
 - The appeal was against the refusal of planning permission for Change of use of basement from retail storage (Class E) to residential (Class C3) to provide a one-bed self contained flat with home office/workspace accommodation.
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Decision

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

Reasons

2. The 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. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters, such as providing information that is shown to be manifestly untrue or inaccurate, or deliberately concealing relevant evidence. It also includes substantive matters, such as 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, or failure to provide evidence to substantiate the reasons for refusal.
4. The Applicant submits that a full award of costs is justified as it is suggested that the Council acted unreasonably in reaching its decision on the planning application by preventing development that should be permitted, not undertaking a site visit, incorrect policy considerations and vague, generalised or inaccurate assertions about the impact of the proposal.
5. The planning application was dated 22 December 2021 and validated on 5 January 2022. It was refused on 17 November 2022. The Article 4 Direction became effective on 22 July 2022. The appellant asserts that the delay in determining the application was to allow the Article 4 Direction to be effective. As the article 4 requires planning permission for changes from Class E to Class C3, the fact that the Article 4 was effective is not determinative in this case. The Council state that the delay was due to a shortage of staff, which whilst unfortunate is not in itself unreasonable.

6. The Council states that an officer site visit was undertaken to the outside of the property to assess the parking situation but it was not necessary to enter the building due to familiarity with the site. The need for a site visit is in the first instance a matter for the Council and the lack of a site visit for any particular application is not in itself unreasonable.
7. The reason for refusal as set out in the Council's decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of the Local Plan that the Council considered the proposal would conflict with. These reasons have been adequately substantiated by the Council in its appeal statement which demonstrates how they considered the proposal would be harmful to the quality of the retail unit. Whilst the development plan as a whole includes the London Plan, this was not listed in the reason for refusal.
8. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

H Senior

INSPECTOR