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## Costs Decision

Site visit made on 27 February 2024

**by Sarah Manchester BSc MSc PhD MEnvSc**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 April 2024**

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### **Costs application in relation to Appeal Ref: APP/N5660/W/23/3330737 7 Moorland Road, Lambeth, London SW9 8UA**

- 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 Martali Management Ltd for a full award of costs against London Borough of Lambeth.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for refurbishment and conversion to form five dwellings, including the erection of two rear dormer windows, alterations to fenestration, reinstatement of boundary treatment and the retention of an existing off-street parking space. (Please note: The reference number for this application for Full Planning Permission is 23/002415/FUL, but there is also an associated Listed Building Consent application related to these works with reference number: 23/02416/LB).
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### **Decision**

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

### **Reasons**

2. Parties in planning appeals are normally expected to meet their own expenses. However, the Planning Practice Guidance (the 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 states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In an appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
4. The applicant is seeking a full award of costs on grounds that the Council behaved unreasonably including by: failing to co-operate and communicate during the processing of the application; failing to grant permission for a scheme that was approved in 2019 (Ref: 18/02204/FUL); only providing a recommendation once the appeal has been made; and failing to determine the related listed building consent application. The applicant also refers to the Council's behaviour during the processing of approved planning application

Ref: 23/01155/FUL, including its failure to provide a policy justification and failing to grant permission for a materially similar permission.

5. The Council indicates that the delay in decision-making was due to workload pressures and, albeit after the deadline for determination had passed, it requested a time extension. However, it acknowledges that it was not proactive in communicating with the applicant during the prescribed time period. While it has behaved reasonably during the appeal process, I find the Council's earlier failure to communicate in a timely manner was unreasonable.
6. The Council's appeal statement indicates that the proposal is acceptable in principle and it would have been recommended for approval subject to a legal agreement restricting car parking permits and making provision for car and cycle club membership. However, in the absence of such, and had it been in a position to determine the application, it would have refused it. The need for a legal agreement is substantiated with reference to the development plan, and this is not disputed by the applicant. Therefore, the Council's position was clear on appeal and I am not persuaded that it behaved unreasonably in this regard.
7. Application Ref: 23/01155/FUL was received by the Council on 28 March 2023 and it was approved on 9 October 2023, shortly after the appeal was made. However, the draft decision notice is dated 21 July 2023, which is before the date of the application subject of the appeal. I note the correspondence between the parties in relation to the 2023 permission. However, while the applicant considers this is evidence that the Council would not have approved the appeal application, that correspondence relates to the approved scheme and it pre-dates the application subject of the appeal. Whether or not the Council behaved unreasonably in relation to the 2023 permission is not a matter for the appeal or this costs application.
8. I understand that the associated listed building consent application remains undetermined. However, the applicant has not appealed against the Council's failure to determine it and the costs application does not relate to it directly. In any case, it does not appear unreasonable of the Council to await the appeal decision before determining the associated application.
9. With reference to the consistency of decision-making, the Council's position is that, subject to a satisfactory legal agreement, it would have approved the appeal application. The resulting permitted scheme would be inconsistent with the 2023 permission but consistent with the 2019 permission, which is the outcome sought by the applicant. While the applicant disputes the application would have been approved, the Council could not have approved it in any case in the absence of a satisfactory legal agreement. Again, while the applicant may disagree, the Council states that the appeal could have been avoided if a legal agreement had been progressed. I am not aware that the Council communicated this at the time. However, the applicant was aware of the need for a legal agreement and could have been proactive in this regard, as they have been in the appeal.
10. As can be seen from my appeal decision, I have reached the same conclusion as the Council and, with the benefit of the completed Unilateral Undertaking, I have allowed the appeal accordingly. The applicant is frustrated with the delay in the processing of the application, what they perceived was likely to have been the Council's decision and they consider they had little choice but to appeal. However, as permission could not have been granted in the absence of

a legal agreement, it seem to me that the appeal could not have been avoided. Moreover, there appears to be little compelling evidence specifically in relation to the appeal application to demonstrate that planning permission would have been unreasonably withheld.

### **Conclusion**

11. Notwithstanding that the Council did behave unreasonably, in terms of its failure to communicate and to determine the application in a timely manner, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal, as described in the PPG, has not been robustly demonstrated.
12. Therefore, an award of costs is not justified.

*Sarah Manchester*

INSPECTOR