



Costs Decision

Site visit made on 9 April 2024

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2024

Costs application in relation to Appeal Ref: APP/K5600/D/23/3333904 4 Child's Street, London, SW5 9RY

- 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 Dr Helmi Ismail 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 excavation of single storey basement, formation of rear lightwell with walk on rooflight and associated alterations.
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Decision

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

Reasons

2. The Planning Practice Guidance 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.

The Application

3. There have been 2 previous refusals for the development dealt with in this appeal. Both appeals failed for technical reasons relating to documentation. In the second of these appeals (APP/K5600/D22/3302060), the Inspector found that the submitted Construction Traffic Management Plan (CTMP) was satisfactory, and that the measures set out in it would ensure minimal disruption or inconvenience to those living and working nearby and that any violation of the 20-minute loading restriction could be controlled by parking enforcement, and a condition could deal with the matter.
4. However, the appeal failed because the submitted Construction Management Statement (CMS) was not signed by a suitably qualified Chartered Engineer. On the basis of a precautionary approach, the Inspector concluded that it would be inappropriate to deal with the matter by a condition. The CMS submitted with the current appeal is signed by a member of the Institution of Structural Engineers, thereby overcoming that deficiency.
5. Following that appeal decision, the council wrote a letter, dated 29th November 2022, addressed to the Planning Inspectorate, stating that it respectfully disagrees with the Inspectors assessment of the CTMP. This letter was published on the application portal during the consultation period, before the neighbour consultation period had expired. The decision to publish the letter,

which was not copied to the appellant, and may have influenced the objections made by local residents and fettered the ability of the council to consider the application on its individual merits, and in the light of the previous Inspector's decision.

6. The behaviour of the council to not accept the findings of the previous Inspector, and the revised document submitted on this occasion, and its failure to add anything new, is considered unreasonable. This has led to the appellant incurring unnecessary or wasted expense in the appeal process. A full award of costs is therefore sought.

The Rebuttal

7. No rebuttal has been offered by the council.

Conclusions

8. The previous Inspector's decision referred to by the appellant was clear, that it was likely that a condition could be applied with reference to the CTMP, had it not been for the issue of a signed CMS. In the absence of a signature by a Chartered Civil Engineer (MICE) or a Chartered Structural Engineer on the CMS, a precautionary approach was taken. It is also clear from the letter that the council wrote to the Planning Inspectorate that the council did not accept these judgements. The council has therefore put forward the same arguments as previously.
9. Looking at the matter afresh, I have come to similar conclusions to the previous Inspector, but now with the assurance that the CMS has been signed off by Chartered Structural Engineer. Both the CMS and the CTMP are persuasive that the development can take place without unreasonable disruption to residents of Childs' Street or businesses on Earls Court Road or highway users of both roads, and without harm to the structural integrity on the appeal building and, in particular, No.5 Child's Street. In the absence of fresh evidence to the contrary, the costs claim is made out.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Dr Helmi Ismail 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.
12. 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.

Terrence Kemmann-Lane

INSPECTOR