



Costs Decision

Site visit made on 2 April 2024

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2024

Costs application in relation to Appeal Ref: APP/K5600/W/23/3331134 Hungerford House, 22 Napier Place, London W14 8LY

- 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 Hungerford House Residents Association Ltd for an award of costs against the Council of the Royal Borough of Kensington and Chelsea.
 - The appeal was against the refusal of planning permission for development described as new railings and gate across the Napier Place frontage of Hungerford House.
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Decision

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

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 applicant states the Council's refusal was unreasonable, being both unjustified and unnecessary. The applicant considers that the Council did not fully consider the existence of permitted development rights under the Town & Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").
4. The applicant says they had no option but to apply for a lawful development certificate to provide later argument as part of their case. The applicant feels the Council has not justified its decision at appeal and has moved its objections at appeal.
5. The planning application was refused on the 28 August 2023. The applicant applied for a certificate of lawful development which was granted on the 7 December 2023. Therefore, while it is reasonable for the Council to have knowledge of the GPDO in general terms, the applicant did not provide certainty that these rights existed and could be implemented on this specific site until after the Council had refused the application.
6. The Council's reasons for refusal are set out in the decision notice of the planning application and are complete, precise, specific, and relevant to the planning application. The reasons are also linked to the policies of the development plan and are expanded upon in the Council's Delegated Report. The Council does not specifically refer to the GPDO, but this is reasonable given the applicant had not secured a certificate of lawful development at that time.

7. The applicant was successful in securing a lawful development certificate during the lifecycle of the appeal and the Council responded by acknowledging that a means of enclosure of 1m in height could be erected under the terms of the GPDO as part of their Statement of Case. The Council stated that making the railings higher than 1m would have a harmful impact on the surrounding townscape contrary to the Development Plan policies.
8. Given this change in circumstances since the Council refused the application, I do not consider it unreasonable for the Council to respond to this change as part of its evidence. The effect of the development proposal on the character and appearance of the area was a matter of planning judgement. The reasons for objection have been adequately substantiated by the Council in its evidence and I do not consider them to be unjustified. While I ultimately disagreed with the Council, I consider that the Council had reasonable concerns about the impact of the proposed development which justified its decision and arguments put to me at appeal.

Conclusion

9. As a result, having considered the above, I conclude that unreasonable behaviour by the Council, as described in the Guidance, has not been clearly demonstrated. Therefore, unnecessary or wasted expense has not been incurred by the applicant. Consequently, the application for an award of costs is refused.

N Praine

INSPECTOR