



Costs Decision

Site visit made on 11 June 2024

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

Costs application in relation to Appeal Ref: APP/E5330/W/23/3327234 22 Foxes Dale, Blackheath, Greenwich SE3 9BQ

- 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 Mr Satbir Kler and Mrs Amy Kler for a full award of costs against the Council of the Royal Borough of Greenwich.
 - The appeal was against the refusal of planning permission for demolition of existing building and erection of a replacement one and two-storey dwellinghouse (with roof-space accommodation) and associated bin storage, cycle storage and landscaping.
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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. In this instance, the applicants allege that the Council behaved unreasonably by failing to produce an officer's report which related to the appeal proposal, which resulted in the submission of an updated officer's report at the appeal stage. It is stated that this necessitated the submission of the appeal and required the preparation of a second statement of case.
3. It is also stated that the Council behaved unreasonably by referring to a policy document- the Urban Design Guide Supplementary Planning Document (2023) (SPD)- which was adopted following the determination of the planning application. Unreasonable behaviour is also alleged in relation to the Council's interpretation that the proposal amounted to a 5-bedroom dwelling and not a 4-bedroom dwelling as set out within the application submission.
4. It is necessary for the Inspector to take account of all material planning considerations in the determination of an appeal. This can include policy documents which were not adopted at the time of the application determination. It was not unreasonable of the Council to make reference to the SPD in their statement of case. Given this, I find that the Council has not acted in an unreasonable manner in this respect. Furthermore, there is no particular evidence that the applicants incurred unnecessary expense during the appeal process in addressing the Council's comments in relation to this SPD.
5. The Council's justification for assessing the proposal as a 5-bedroom dwelling are well-reasoned and compelling. Given this, the Council did not act in an unreasonable manner in this respect.

6. The Council acknowledge that they failed to upload the correct officer report to the planning website, instead uploading a report which related to an earlier planning application at the same site. I acknowledge that from time to time, such administrative errors can, and do, occur. Nonetheless, it would appear that the Council were made aware of this error in correspondence on behalf of the applicants in June 2023, some months prior to the submission of the appeal, and yet failed to rectify this error until January 2024, after the submission of the planning appeal. This represents poor case management.
7. In the absence of an Officer Report which related to the submitted proposal it is stated that the applicants felt it necessary to submit a planning appeal rather than an amended application to attempt to address specific areas of concern. Nonetheless, it would appear that the applicants did submit a further revised planning application to the Council in December 2023¹ before the 'corrected' officer report was made available. Whilst the full details of this amended proposal are not before me, it would appear that the submission of a planning appeal was not the only option available to the applicants to address the Council's concerns. The Council have presented a reasoned and substantiated case in relation to the reasons for refusal. Given this, it would appear that, even if the correct officer report had been uploaded to the Council's website at the time the planning application was determined, the appeal was inevitable in any case.
8. Notwithstanding this, following the submission of the appeal the corrected officer report was provided. However, by this point the applicants had been required to compile an appeal statement of case, and consequently this necessitated the preparation of a second statement of case to address the corrected officer report. To my mind this differs substantially from the procedure for responding to a Council's Statement of Case as part of the appeal process, as the Council's particular concerns in relation to the appeal proposal were not known to the applicant until following the submission of the appeal. The preparation of this second statement of case resulted in wasted time and expense for the applicant which would have been unavoidable had the correct officer report been provided prior to the submission of the planning appeal.

Conclusion

9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the preparation of the statement of case version 2 (dated January 2024) and a partial award of costs is therefore warranted.

Costs Order

10. 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 Greenwich shall pay to Mr Satbir Kler and Mrs Amy Kler, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the preparation of the statement of case version 2 (dated January 2024).

¹ Ref. 23/4091/HD

11. The applicants are now invited to submit to the Council of the Royal Borough of Greenwich, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, such costs shall be assessed by the Senior Costs Office.

N Robinson

INSPECTOR