
Costs Decision

Site visit made on 28 May 2024

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Costs application in relation to Appeal Ref: APP/K5600/D/24/3338165 5 Seymour Walk, Kensington and Chelsea, London SW10 9NE

- 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 Alastair Crawford 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 the creation of a basement beneath buildings and 50% of the garden area, alterations to lightwells and creation of 2 rooflights with associated internal plant and landscaping.
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Decision

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

Reasons

2. Parties in planning appeals and other planning proceedings normally meet their own expenses, but 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. Applications for costs need to clearly demonstrate how any alleged unreasonable behaviour has resulted in such unnecessary or wasted expense.
3. The PPG states that local planning authorities may be at risk of an award of costs against them if they behave unreasonably by, amongst other things:
 - 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
 - not determining similar cases in a consistent manner.
4. The claimant submits that the Council Planning Applications Committee's refusal of the appeal application followed on from inaccurate and inconsistent advice from the officers at the meeting. No transcripts have been submitted, however, so I must first and foremost turn to the officer's written report and the application plans which I understand were in front of the committee.
5. Much of the disagreement here relates to whether the depth of the proposed basement would accord with the provision in policy CL7 of the Local Plan 2019 (LP), requiring basement developments to comprise no more than a single storey. This is defined in the supporting text as being a space that cannot be

subdivided in the future to create additional floors, with a floor to ceiling height generally limited to about 3 to 4 metres but with a small extra allowance for proposals with a swimming pool. The submitted plans show a floor to ceiling height of 3.95m but with a 1m plant zone on top of that and a 1.6m deep pool. The officers' report states that the general floor to ceiling height would be 4.9m, but taking account of the provision of ceiling plant and the pool the basement would represent a single storey basement in compliance with LP policy CL7. The committee, in refusing the application, disagreed with this interpretation.

6. I am not convinced that the committee was misled or misdirected itself on this point. I see no clear statements regarding the inclusion of plant or the allowable depth of swimming pools in either LP policy CL7 or the accompanying Supplementary Planning Document *Basements* (SPD). Looked at in isolation, the floor to ceiling height as proposed would be 3.95m, within the terms of the policy. I must also bear in mind, however, that the measurement is meant to help define what is a single storey space that could not be sub-divided in future into more than one floor. The overall height created here could theoretically be split up into 2 floors. The amount of excavation required by the proposed scheme would potentially cause significant impacts on neighbours' living conditions during the works. In my view there were legitimate concerns about compliance with policy CL7 and the committee was reasonably entitled to take a different view from the officers.
7. The appellant also states that other basements have been allowed with similar depths for swimming pools. I do not have full details of these other cases so cannot draw conclusions about how comparable they are. I find no evidence to show that the Council has been unreasonably inconsistent in its decision-making.
8. I note that the Council, in its costs rebuttal, also raises an issue about the development being overbearing and enclosing. This matter was not raised in either the refusal notice or in any appeal statement. It furthermore does not appear to be raised as an issue in either LP policy CL7 or the SPD. As this is not part of the Council's main case, I place no significant weight on it in the overall appeal process.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Les Greenwood

INSPECTOR