



Costs Decision

Site visit made on 9 July 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2024

Costs application in relation to Appeal Ref: APP/X5210/W/24/3343266 76 Neal Street, Covent Garden, London WC2H 9PA

- 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 Morad Arefin on behalf of DOW Properties Ltd for a full award of costs against the Council of the London Borough of Camden.
- The appeal was against the refusal of planning permission for installation of ventilation system – kitchen – bakery activity at basement floor & relocation extra flue duct to the rear-side elevation. Conversion small area at basement (7.04sqm) to be a primary cooking area.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) confirms that an award of costs is an order which states that one party shall pay to another party the costs, which may be in full or in part, incurred by the receiving party during the process by which the Inspector's decision is reached. The costs which can be claimed relate only to those costs incurred during the appeal process.
3. The PPG goes on to advise that, irrespective of the outcome of the appeal, all parties are expected to behave reasonably to support the appeal process and costs may only be awarded against a party who has behaved unreasonably and, that the unreasonable behaviour has directly caused the party applying for costs to incur unnecessary and wasted expense in the appeal process.
4. Costs cannot be claimed for the period prior to, or during, the determination of the planning application. However, behaviour and actions at the time of the planning application can be taken into account in consideration of whether costs should be awarded.
5. Paragraph 047 of the PPG¹ indicates that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal and will be at risk of a procedural award being made against them for reasons including a lack of co-operation with the other party.
6. Paragraph 049 of the PPG² indicates that local planning authorities will be at risk of a substantive award being made against them for, amongst other things, preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and

¹ Paragraph: 047 Reference ID: 16-047-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

- any other material considerations, or refusing planning permission on a planning ground capable of being dealt with by conditions.
7. The applicant's claim is based on the length of time the Council took to make a decision, the lack of communication and delays in communication between the Council departments and with the applicant, and that the applicant had resolved the objections from a neighbouring agent by amending the scheme and submitting the revised Noise Impact Report.
 8. The appellant also claims that they revised everything and obtained the agreement of the planners and environmental department and, therefore, that the application should have been approved. Moreover, the applicant contends that the outstanding odour issue could have been resolved by condition.
 9. From the evidence before me, including the complaints submitted by the applicant and the responses from the Council, the Council did communicate with the applicant and provided them with several opportunities to revise the scheme. However, the evidence also shows delays, which the Council has accepted, and consequently the Council did not communicate as well as they could have. This resulted in some degree of unreasonable behaviour during the consideration of the application on the part of the Council. However, I have not been provided with any evidence that the behaviour of the Council has resulted in wasted expense in relation to the applicant's appeal.
 10. As detailed in my formal decision, that the Council received the amended plans does not amount to the Council approving these details. I have also dealt with the suggestion of a condition to require the submission of odour control details in my formal decision and concluded that such a condition would not meet the tests in the PPG.
 11. Whilst I appreciate that the outcome of the application would have been a disappointment to the appellant, the Local Planning Authority were not unreasonable in coming to the decision to refuse. I find nothing to suggest that a decision was not reached on the basis of the proposal and assessed against the Development Plan. For this reason, I find that the Council has not prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan.
 12. As detailed in my formal Decision, I have found that the Council had reasonable concerns about the proposed development which justified its decision. The appellant had to address those concerns and therefore the appeal could not have been avoided.
 13. I therefore have no substantive evidence that the Council has acted unreasonably in regard to the appeal. As such, there can be no question that the applicant incurred unnecessary or wasted expense in the process of the appeal.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated, thus the award of costs is not justified.

K Townend

INSPECTOR