



Costs Decision

Site visit made on 12 July 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2024

Costs application in relation to Appeal Ref: APP/C5690/W/24/3340234 Street Record, Raymond Close, Lewisham, London SE26 6DW

- 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 Stern Family Trust for a full award of costs against the London Borough of Lewisham.
 - The appeal was against the refusal of the Council to grant planning permission for the construction of 4, two storey plus lower ground floor and roof space, four bedroom houses at Land to East of Raymond Close SE26, together with associated landscaping and cycle storage.
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Decision

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

Reasons

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant contends that when determining the planning application the Council added two new areas of concern which formed reasons for refusal, but which had not been raised during the course of the application. This is despite negotiations relating to highways matters extending for several months throughout the determination of the planning application, and despite the Council requesting additional information in relation to other matters. The applicant also contends that six months after receiving the application the Council had not assessed it in full and only considered some issues in isolation.
4. For these reasons, it is stated that, the Council has behaved unreasonably by 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.
5. The Council explain that during the determination of the planning application, a number of extensions of time were agreed to. The applicant was informed in mid-June 2023 that the application would be refused. Subsequent to this, a full assessment of the application was undertaken and the additional areas of concern related to daylight and sunlight and the accessibility of the new dwellings were identified. The Council state that as the applicant had already been informed that the application would be refused, it would have been unreasonable to request additional information related to the daylight and

sunlight and accessibility issues, as this would have resulted in additional costs to the applicant.

6. Based on the evidence before me, it is clear that the Council had intended to refuse the scheme on highways grounds and that this was communicated to the applicant's agent ahead of their decision being issued.
7. I understand that the time taken for the Council to complete their full assessment of all issues, and the absence of communication from the Council in relation to the two additional reasons for refusal would have been frustrating. However, following the submission of additional daylight information during the appeal process, the Council continued to identify harm in relation to this issue. Therefore, even if the applicant had an opportunity to address the Council's additional concerns during the determination of the application, it would have been refused for the reasons set out in the Council's appeal documentation. Given the above, the applicant would have needed to appeal against the decision of the Council anyway to gain permission for the development (or submit a further application to the Council).
8. While I did not agree with the Council's conclusions, the reasons for refusal were specific, relevant to the application and related to the relevant policies in the development plan. Their report and appeal statement expanded on this and demonstrated a reasonable exercise of planning judgement.
9. Therefore, having considered all the evidence put forward by the parties, I consider that the appeal could not have been avoided. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

B Pattison

INSPECTOR