Costs Decision

Site visit made on 13 November 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06th December 2024

Costs application in relation to Appeal Ref: APP/U5360/X/24/3346138

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Edith and Carr Ltd for a full award of costs against the Council of the London Borough of Hackney.
- The appeal was against the refusal of a certificate of lawful use or development (LDC) for the installation of a louvre on the façade of unit 1F, Mentmore Terrace.

1F, 373 Mentmore Terrace, London E8 3DQ

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 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. In summary, it is claimed the Council provided inconsistent and inaccurate advice, failed to deal with the applicant in a positive and proactive manner, and has taken an unreasonable stance.

4. It is claimed that an unidentified employee of the Council advised, during a telephone conversation in 2022, that planning permission was not required for the louvre. Even if that is correct, the applicant must bear responsibility for accepting such verbal assurance without recording the name or position of the person spoken to, in the absence of formal written confirmation from the Council. Indeed, Studio Marturano sought such confirmation from the Council by email dated 1 July 2022, which was not provided[1].

5. The Council's failure to respond to the planning query in the email dated 1 July 2022, and to instead respond to a query concerning Building Regulations, is an example of poor-quality service, but not unreasonable behaviour causing the applicant to incur unnecessary or wasted expense in the appeal process. The Council informed Studio Marturano that it considered the installation of the louvre would require planning permission prior to the works being completed[2].

6. The Council's reference to the internal elements of the kitchen extract system is a result of it looking at the development as a whole. While the applicant did not seek an LDC for the internal elements, the Council's consideration of those parts of the extract system was not unreasonable. Similarly, reference to noise and odour concerns were in the context of the Council's advice that planning

[1] The applicant's Appendix 1
[2] The applicant's Appendix 2

permission was required. In any case, this did not lead to the applicant incurring wasted or unnecessary expense in the appeal process.

7. It is clear that the applicant and the Council disagreed on fundamental issues relating to the claimed lawfulness of the works and were unable to reach an agreement. It was not therefore unreasonable for the Council to not discuss the submissions with the applicant prior to refusing the application, as the result would have likely been the same.

8. The Council's reference to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) in its first reason for refusing to issue an LDC is an example of it being thorough. The Council found that the louvre was development requiring planning permission, and it was clarifying that it did not consider the GPDO granted planning permission for that development. It is not the sole reason for refusing to issue an LDC, and while it may have been more neatly presented as the second reason for refusal, it was not unreasonable for the Council to mention this in its decision notice.

9. I have found that the louvre constitutes development requiring planning permission and that it is not lawful. It was not unreasonable for the Council reach the same conclusion following the considerations set out in its officer report.

Conclusion

10. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

L Douglas

INSPECTOR