
Costs Decision

Hearing Held on 11 December 2024

Site visit made on 11 December 2024

by Jonathan Hockley BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2025

Costs application in relation to Appeal Ref: APP/K5600/W/24/3350392 39 Harrington Gardens, Kensington SW7 4JU

- 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 J Woolf for a partial or a full award of costs against the Royal Borough of Kensington & Chelsea.
 - The hearing was in connection with an appeal against the refusal of planning permission for external alteration to glaze over lightwell, works to front steps and other external alterations. Internal alterations throughout, including alterations to partitions and other internal alterations.
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Costs application in relation to Appeal Ref: APP/K5600/Y/24/3350391 39 Harrington Gardens, Kensington SW7 4JU

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr J Woolf for a partial or a full award of costs against the Royal Borough of Kensington & Chelsea.
 - The hearing was against the refusal of listed building consent for external alteration to glaze over lightwell, works to front steps and other external alterations. Internal alterations throughout, including alterations to partitions and other internal alterations.
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Decision

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

Procedural Matters

2. An application for a full, or alternatively a partial award of costs was submitted in writing at the Hearing. Agreement was reached over a timetable for submission of responses at the Hearing and the Council responded during this agreed timescale. The Applicant then provided their final comments.

The submissions for Mr J Woolf

3. In summary the following comments were made:
 - The Council behaved unreasonably procedurally and substantively.
 - The Council failed to cooperate during the determination of the applications and the preparation of the appeal information, including long delays to respond to the Applicant's Statement of Common Ground (SoCG).

- The applications were refused on grounds where suitable conditions could have been applied to the applications to enable the Council to grant permission and the failure and refusal of the Council to discuss amendments to the applications was unreasonable. The Council has consistently failed to consider the use of conditions throughout the process.
- The Council failed to follow well established case law requiring the balancing of less than substantial harm and public benefits, including failing to assess the scale of the harm that they stated would be caused by the proposals.

The response by the Royal Borough of Kensington & Chelsea

4. The Council's response can be summarised as follows:

- The Council does not accept new information during the course of an application unless there are exceptional circumstances. This is standard for the Council and has been in place for many years and to accept revisions during the application process would undermine this consistent approach. The Applicant was advised throughout the application process that this was the case and that a new application would likely be viewed more favourably and negate costly appeal proceedings. The Planning Inspectorate concluded that revisions proposed were substantial. The timeline provided by the Applicant regarding the SoCG is disagreed.
- The number of conditions proposed by the Applicant was "absurd". Planning Practice Guidance (PPG) states that it is good practice to keep the number of conditions to a minimum where possible and that such conditions should meet the 'six tests', and that it would not have been appropriate to use conditions to modify the development in a way that makes it substantially different. Conditions would not have been kept to a minimum, a number of them would not have met the six tests and they would have made the application substantially different.
- Insufficient information was provided to enable the Council to reach a position on the scale of less than substantial harm and the Council considered the correct guidance and policy in determining the applications. Additional case law was submitted during the Hearing necessitating an adjournment.

The final comments for Mr J Woolf

5. In summary:

- The position of the Council not to accept new information during the course of an application is fundamentally flawed and contrary to PPG.
- The conditions would not make the development fundamentally different and there is no evidence to suggest that the conditions would fail to meet the six tests. The conditions would only make minor amendments and do not conflict with the Inspector's decision not to accept additional documents. The Council's position conflicts with case law.
- The Council's timeline relating to the SoCG is not recognised.

Reasons

6. 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.
7. The Applicant is clearly aggrieved at the stance of the Council during the application process, where they did not accept amendments. The Council have explained that this is standard procedure for themselves and consider that the Applicant was made fully aware of this.
8. PPG states that costs cannot be claimed for the period during the determination of the planning application, but that all parties are expected to behave reasonably throughout the planning process, and behaviour and actions at the time of the planning application can be taken into account in consideration of whether or not costs should be awarded.
9. It is clear that the Council have a rigid approach when it comes to considering applications in terms of additional or revised information. As long as this policy is clearly stated to applicants (and I have no reason to believe that that was not the case in this instance) then I do not consider this to be manifestly unreasonable, although I do understand the Applicant's concerns in this regard, particularly over minor amendments.
10. The Council were clear in the Hearing that they considered some conditions to be suitable and others not, for various reasons, and while I agree that some conditions on minor matters could have been agreed (as in my decision), they were clearly of the view that conditions could not overcome their fundamental objections. In my decisions I have considered the use of conditions where appropriate and have concluded that some conditions could be used, but that, in my view, harm would still occur and the conditions proposed would not mitigate this to a sufficient degree to outweigh the harm. I do not consider therefore that they have behaved unreasonably in this regard.
11. I note the reference to PPG guidance on whether conditions can be used to modify plans and other details submitted with an application, which states that "If a detail in a proposed development, or the lack of it, is unacceptable in planning terms the best course of action will often be for the applicant to be invited to revise the application. Where this involves significant changes this may result in the need for a fresh planning application." (Reference ID 21a-012-20140306).
12. While I can appreciate the Applicant's view that this paragraph states that they should be invited to revise the application, I also note the final sentence stating that if significant a new application may be required, which is the Council's point of view in this case. I do not consider therefore that they have behaved unreasonably in this regard.
13. Evidence provided over the preparation of the SoCG is conflicting to a certain regard and it is clear that there has been a breakdown in communications to some extent between the parties. However, it appears from the evidence provided that the Council engaged in this process, with the substantial gap in the proceedings (from 31 October 2024 through November) largely appearing to be the result of an email sent to a Council employee who was off work. However, notwithstanding any issue regarding missing emails or misdirected

emails, this delay does not appear to be significantly different to the Applicant's own timeline during October 2024. I do not consider therefore that the Council have behaved unreasonably on this matter.

14. The Applicant notes that PPG states that in the context of "How can the possibility of harm to a heritage asset be assessed", that within each category of harm the extent of harm may vary and should be clearly articulated. While the Council have not placed such harm on a spectrum inside the category of 'less than substantial harm' they have clearly articulated the harm that they considered would arise from the proposals and have complied with the PPG in this respect.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Jon Hockley

INSPECTOR