
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 the Royal Borough of Kensington & Chelsea for a partial or a full award of costs against Mr J Woolf.
 - 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 the Royal Borough of Kensington & Chelsea for a partial or full award of costs against Mr J Woolf.
 - 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 award of costs was submitted in writing to the Planning Inspectorate (PINS) on 6 December 2024. Agreement was reached over a timetable for submission of responses at the Hearing and the Appellant responded during this agreed timescale. The Council then provided their final comments.

The submissions for the Royal Borough of Kensington & Chelsea

3. In summary the following comments were made:
 - The Appellant failed to cooperate in the preparation of the appeal information, providing delayed and unhelpful responses during the Statement of Common Ground (SoCG) process and including issues and new evidence which should have been within their Statement of Case

(SoC). This led to extra cost for the Council to deal with such issues in terms of additional work. Issues such as the lack of 'track changes' on revised versions of the SoCG are one indication of a lack of cooperation leading to additional work.

- The Appellant's SoC focused on the amendments which were not accepted by the Inspector. Final comments were allowed in this case but these still focused on the amendments in many instances, leading to more work for the Council and also stated that the Appellant reserved the right to make reference to further information, and that there were numerous (detailed) inaccuracies in their appeal documentation.

The response by Mr J Woolf

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

- The Appellant has sought at all times to provide all necessary information and to adhere to deadlines. The Council have not done the same and did not meet the PINS deadline for the SoCG, and did not engage in the SoCG preparation process. It was entirely reasonable to consider at the Hearing whether conditions could be used within the framework of the original appeal. Any delays were largely or wholly of the Council's own making. 'Red line' and 'clean' versions of the SoCG were submitted.
- No fresh and substantial evidence was submitted and the approach to seek to resolve concerns by the use of conditions was entirely appropriate. The inaccuracies detailed cover a small number of matters where minor errors are identified, which are minor discrepancies and mistakes – this is not unreasonable behaviour.
- The Council fail to state whether they are applying for a full or partial award of costs.

The final comments of the Royal Borough of Kensington & Chelsea

5. In summary:

- The Council disagree with the alternative SoCG timeline provided by the Appellant. The SoCG focused almost entirely on the amended scheme and changed substantially mid-way through the process after the Appellant's legal representative was instructed, leading to abortive work. The original SoCG did not include a section on 'matters not agreed'.
- The minor amendments were considered by the Inspector to amount to a substantial difference to the original application but the Appellant continued to focus on these. The timelines of the Appellant continue to be disagreed with.
- The Council consider that the Hearing would not have been needed if a new application was made and in this respect are seeking full costs. They are also seeking partial award of costs due to additional work undertaken during the appeal process regarding amendments, late evidence and abortive work.

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. Evidence provided over the preparation of the SoCG is conflicting to a certain regard. A clear example of this can be found in the email of 31 October 2024 from the Appellant to the Council, to an officer who was on sick leave at that time. The Council note that the email was not copied to anyone else and they cannot find evidence of this email in their system (and indeed that it should have been copied to or forwarded to other officers), whereas the Appellant provides a copy of the email in their evidence. Another example is the conflicting use of track changes or red lines.
8. From the evidence provided the production of the SoCG appears to have been quite fraught at times and there appears to me to have been a breakdown in communications between the parties. It is clear that there were fundamental issues on the details of the scheme(s) and this inevitably overspilled into the SoCG process. On such evidence provided it is difficult to apportion blame or conclude that either party has behaved unreasonably in this regard, including the Appellant.
9. The Council note a blurring between the SoCG and the Appellant's SoC in terms of evidence, but it is unclear how this would have resulted in additional costs for the Council, as such evidence would have needed to be dealt with in any event. I note the views regarding the Appellant's final comments and the content of these but likewise it is difficult to ascertain where additional expense would have arisen given that these amendments had already been commented on by the Council.
10. While I decided that the amended scheme should not be accepted, the Appellant was open to consider whether certain issues could be dealt with or mitigated by condition. I understand the concern that this effectively 'added up' to the scheme that I considered to be substantially different. However, and notwithstanding this, conditions can, in certain cases, usefully modify a development applied for and I do not therefore consider that the Appellant behaved unreasonably in this regard by exploring this option. While I have disagreed in my decisions that the conditions discussed would overcome the harm that the proposal would cause, I do not consider that the Appellant has fundamentally behaved unreasonably in seeking to promote the use of such conditions as a way to mitigate the acknowledged harmful elements of their scheme.
11. I do not consider that significant or substantial additional evidence was submitted during the appeal process. Final comments were allowed when considering the contents of the original SoC and while the Appellant noted that they reserved the right to submit information concerning recent planning decisions, case law, and so on this is fairly standard procedure in an evolving planning legislation environment. While the submission of the opening statement from the Appellant was reasonably lengthy, the Council had the opportunity at the Hearing of the adjournment within the day to consider such information.

12. I note the list of inaccuracies stated to be in the application submission and carried on through the appeal documentation and agree that some of these matters are errors. This is a complex case and the range of documents, and the modifications to some of these documents is also complex. While some of the information submitted has therefore been inaccurate (in the words of PPG) and could constitute unreasonable behaviour, I am not convinced that this has led to unnecessary or wasted expense in the appeal process, as they have been largely carried over from the application.
13. It is conjecture to a certain extent that if new planning and listed building consent applications were submitted then the appeal would not have been needed. The Appellant may still have appealed on the provisions of the original scheme. I note in this respect the reasonably complicated recent planning history and multiple applications submitted for the site.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Jon Hockley

INSPECTOR