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## Costs Decision

Site visit made on 5 February 2025

**by T Gethin BA (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

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### **Costs application in relation to Appeal Ref: APP/N5660/W/24/3350989 218 Railton Road, Lambeth, London SE24 0JT**

- 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 Mrs Shi for a full award of costs against the Council of the London Borough of Lambeth.
  - The appeal was against the refusal of planning permission for the development described as 'Erection of retail of single-story ground floor and first-floor rear extension to create 2-bed s/c flat'.
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### **Decision**

1. The application for an award of costs is partially allowed, in the terms set out below.

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, the 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.
3. Although the appeal proposal did not seek to change the use of the ground-floor, the extension proposed did mean that the previous extraction system would need to be replaced. Given the ground-floor use involves a takeaway and there are existing residential units in the vicinity of the site, it was therefore reasonable for the Council to require the submission of noise and odour assessments. The Council's requirements for information/reports relating to previous planning applications on the site does not lead me to a different conclusion. In any event, the issue of noise/odour was not a reason for refusal and thus it was not necessary for the applicant to spend any time or expense in exploring the matter at appeal.
4. During the planning process, the Council required the applicant to enter into a section 106 (s106) legal agreement to, amongst other aspects, restrict occupiers of the residential unit from obtaining on-street parking permits. The lack of such an agreement, after the applicant decided they no longer wished to wait any further for it to be finalised, formed a reason for refusal.
5. However, whilst the Council's Officer Report alleges that the appeal proposal without the s106 agreement would be likely to exacerbate existing parking stress and congestion, little evidence was provided to substantiate this; and my appeal decision identifies that the proposed development would not lead to any highway-related impacts that would need mitigating. With the appeal proposal also not involving the creation of a new residential unit, the Council's position that a s106 was needed has thus clearly not been justified. Accordingly, refusing the application on this matter was unreasonable and led to wasted expense for the applicant in dealing with it at appeal.

6. 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 as to whether costs should be awarded. However, the PPG sets out that costs can only be awarded in relation to unnecessary or wasted expense at the appeal. Accordingly, whilst the Council's actions during the planning application process relating to the unnecessary s106 agreement clearly resulted in significant delay, caused anxiety for the applicant and ultimately resulted in an appeal that could have been avoided, the expense and other issues arising from the Council's actions and requests during the planning application process are not covered by this procedure.
7. Nevertheless, for the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Consequently, a partial award of costs is warranted to cover the expense incurred by the applicant in their preparation of the appeal statement and supporting documentation in relation to the first reason for refusal.

### **Costs Order**

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Lambeth shall pay to Mrs Shi the costs of the appeal proceedings described in the heading of this decision, limited to those costs at the appeal stage incurred in addressing the first reason for refusal listed in the Council's Decision Notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*T Gethin*

INSPECTOR