

Costs Decision

Site visit made on 5 April 2016

by H Cassini DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 May 2016

Costs application in relation to Appeal Ref: APP/X5210/W/15/3139042 51 Doltan House, Werrington Street, Camden, London NW1 1QN

- 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 Meir Segal of Werrington Development Ltd for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against the refusal of planning permission for the creation of 2No. 2-bed maisonette units on ground floor and basement levels.
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Decision

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

Reasons

2. Planning Practice Guidance - Appeals (PPG) advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The appellant's application for an award of costs identifies five main grounds of claim.

Ground 1 - Introduction by the Council of a new reason for refusal in the appeal statement and failure to mention the requirement of a Section 106 Unilateral Undertaking within the decision notice.

5. Following submission of its costs rebuttal the Council confirmed that the lack of reference to the Section 106 Unilateral Undertaking (s106) within the decision notice was an administrative error. There is no reason to believe that the Council was not genuine in regard to this.
 6. Furthermore, evidence provided by the Council confirms this matter was raised with the appellant in August 2015 via electronic mail. Reference is also made to the possibility of a s106 in the appellant's Design and Access Statement (May 2015). The requirement for a s106 was also drawn to the appellant's
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attention within the decision notice relating to a previous planning application for a similar proposal at the site in 2012 (Council Ref 2012/1712/P).

7. However, as detailed in my appeal decision, I have found that the particular contributions sought by the Council within the s106 are not necessary to make the development acceptable. The Council also failed to substantiate its arguments in receipt of the s106 and in doing so, behaved unreasonably.
8. I find that the Council acted unreasonably in this respect and as such, the appellant incurred unnecessary costs. I conclude that under this issue of claim, the appellant is therefore entitled to costs related to this issue.

Ground 2 - Failure by the Council to engage with particular regard to the quote received from the Highway Department.

9. Details of the specification produced by the Highway Engineer were included within the appeal statement submitted by the Council. Within their costs rebuttal document the Council confirmed that the specification was not received until after the planning application decision was made. I acknowledge that it may have been of use if dialogue with the appellant had taken place as soon as the specification was available. Notwithstanding this delay, the evidence is available and therefore I see no reason as to why dialogue regarding this matter can not commence.
10. I therefore conclude that under this issue of claim, the appellant is not entitled to costs related to this issue.

Ground 3 - Appeal site not included within the Local List.

11. It is acknowledged that the appeal site is not currently included within the local list with reference to non-designated heritage assets. The appellant considers that in these circumstances the appeal site cannot be held to be a non-designated heritage asset. However, I do not concur. Annex 2 of the National Planning Policy Framework (the Framework) provides a definition of the term 'heritage asset' and confirms that assets may be identified by means other than local listing, which is unsurprising given the practical difficulties of undertaking surveys and investigations necessary to establish a local list. Accordingly, it is not necessary for a non-designated heritage asset to be included on a local list to be considered of value.
12. The Council confirmed that the appeal site will, in the future, be included on the local list. It is a matter of judgement as to whether the appeal site should be considered as a non-designated heritage asset and I have no evidence to suggest that the Council have been unreasonable with regard to that judgement.
13. The delegated report prepared in respect of the previous planning application at the site (Council Ref 2012/1712/P) clearly stated that the Council consider the site to be a non-designated heritage asset due to the architectural quality.
14. I therefore conclude that under this issue of claim, the appellant is not entitled to costs related to this issue.

Ground 4 - Failure by the Council to produce evidence to substantiate each reason for refusal on appeal.

15. Although I did not find for the Council on the entirety of its case, a sufficiently substantial case was made in support of the reasons for refusal detailed within the decision notice.

16. The appellant is therefore not entitled to costs related to this issue.

Ground 5 - Failure by the Council to review their case promptly following the lodging of the appeal.

17. From the details supplied from the Council, I am content that the planning officer was aware of the extent of the existing basement. I have no evidence before me to suggest that the planning officer confirmed that the site was already included on the local list and evidence provided suggests that the site will be included on the list at a later date.

18. The Council has complied with all statutory timescales and provided the required evidence and information.

19. I therefore conclude that under this issue of claim, the appellant is not entitled to costs related to this issue.

Conclusion

20. I have found that the Council has acted unreasonably in relation to Ground 1 of the costs application. As a result, the appellant has incurred unnecessary expense in terms of the preparation and submission of the s106.

21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

22. 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 Camden shall pay to Mr Meir Segal of Werrington Development Ltd, the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred in relation to the preparation and submission of the Unilateral Undertaking submitted under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended).

23. The applicant is now invited to submit to the Council of the London Borough of Camden, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts is enclosed.

Helen Cassini

INSPECTOR