
Costs Decision

Site visit made on 10 October 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 15th November 2016

Costs application in relation to Appeal Ref: APP/U5930/W/16/3155494 Police Station, 360 Forest Road, Walthamstow, London E17 5JQ

- 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 Feroz Yusuf for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The appeal was against the refusal of planning permission for conversion of former Police Station into 21 residential units (4 x 3 bed, 11 x 2 bed and 6 x 1 bed) involving extensions at ground, first and second floor level. Provision of car parking for disabled persons, cycle storage and refuse collection area.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters such as preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. Other substantive matters include the failure to produce evidence to substantiate a 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 application for costs relates to the substantive matters listed as examples above. In this respect, particular reference is made to the unnecessary and wasted expense involved in preparing evidence for the appeal and drafting of a planning obligation, together with discussions with the Council and preparation of amended proposals. The applicant has also made reference to the expense of additional site security required due to the site remaining vacant and derelict since the original decision.
 5. The two reasons for refusal set out in the decision notice are complete, precise, specific and relevant to the application. The reasons for refusal clearly identify what the Council considers to constitute harm and states the policies of the Waltham Forest Local Plan Core Strategy (CS) and Waltham Forest Local Plan
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Development Management Policies (DMP), together with the guidance in the Waltham Forest Urban Design Supplementary Planning Document, that the proposal would be in conflict. Furthermore, the Council's evidence includes a statement of case which seeks to substantiate the reasons for refusal, given that the decision taken at the Council's Planning Committee was different to officer recommendations.

6. It will be seen from my appeal decision that I concluded that the development would be harmful for reasons identified by the Council's Planning Committee Members relating to the effect on the living conditions of neighbouring properties and the unsatisfactory living environment for future residents. In those respects, I consider that the Council has substantiated the associated reason for refusal. Consequently, I cannot conclude that the Council has behaved unreasonably with respect to preventing or delaying development which should clearly be permitted, or that its actions in this respect caused the applicant to incur unnecessary or wasted expense in the appeal process as a result. In this regard, there has also been no unnecessary or wasted expense with respect to management and security costs relating to the appeal site.
7. Notwithstanding the above, it is evident that the Planning Committee Members in making their decision relating to a failure to provide the required level of affordable housing on-site disregarded evidence, including financial viability analysis commissioned by the Council. This included a conclusion relating to the identified margin for a financial contribution in the Independent Review of Economic Viability undertaken by BPS Chartered Surveyors (dated 15 December 2015) that it would be a '*relatively modest sum and would be unlikely to deliver more shared ownership units on site. At this scale there may be limited interest from Registered Providers and the Council may wish to consider an in lieu payment*'.
8. I reached a different conclusion to the BPS report in my decision relating to whether the development would be capable of making a contribution toward affordable housing. Nevertheless, such a conclusion relates to matters of judgement, based on the evidence before me. However, notwithstanding my conclusion, there is no reasoned justification as to why the Planning Committee Members disregarded the evidence prepared by the Council's advisors and supported by officers that the proposed scheme, based on viability assessment, would be unable to provide affordable housing on-site. In that respect, the Council failed to substantiate the reason for refusal and therefore, has behaved unreasonably. The preparation of a planning obligation remained at the applicant's discretion. However, the applicant did incur unnecessary or wasted expense in the appeal process as a result of having to contest the Council's second reason for refusal.
9. There is no evidence before me that the applicant submitted amended proposals to the Council prior to the original decision having been made. The applicant was in a position to decide based on the Council's decision notice, officer reports and discussions with the Council post-decision, if they should pursue the appeal or reapply for planning permission for an amended scheme. Revised drawings were introduced during the appeal process with changes that materially alter the development. However, the appeal process is not intended to be used to evolve a scheme, as it is important that what is considered by the Inspector is essentially what was considered by the Council and on which interested people's views were sought. I, therefore, consider that the Council

did not behave unreasonably with respect to its approach to amended proposals and the applicant did not incur unnecessary or wasted expense in the appeal process as a result.

Conclusion

10. The Council's two reasons for refusing planning permission, as set out in the decision notice, consist of three distinct elements. The effect on the living conditions of neighbouring properties and whether the proposal would provide satisfactory living conditions for future residents, constitute the first reason. Whether the proposal should make provision for affordable housing and if so, whether it should be provided on-site, constitutes the second reason. I have found that the Council behaved unreasonably in reaching a conclusion relating to the second reason for refusal relating to affordable housing, but not the first reason for refusal.
11. I, therefore, conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's second reason for refusal, is justified.

Costs Order

12. 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 London Borough of Waltham Forest shall pay to Mr Feroz Yusuf, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's second reason for refusal, which concerned alleged conflict with Policy CS2 of the Waltham Forest Local Plan Core Strategy and Policy DM3 of the Waltham Forest Local Plan Development Management Policies; such costs are to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to the Council, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Gareth Wildgoose

INSPECTOR