
Costs Decision

Site visit made on 18 October 2016

by Nick Palmer BA (Hons) BPI MRTPI

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

Decision date: 21 November 2016

Costs application in relation to Appeal Ref: APP/C5690/W/16/3154555 19B Marischal Road, Lewisham, London SE13 5LE

- 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 Swanage Limited for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against the refusal of planning permission for demolition of the existing building and the erection of a three storey building containing 5 flats together with landscaping and the provision of secure cycle and refuse stores.
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Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance 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. The application is made on the basis that the Council has not determined similar cases at the appeal site in a consistent manner. Two planning applications were submitted to the Council, one proposing 6 flats and the other proposing 5 flats. Both of the applications were refused but the applicant considers that the smaller scheme had addressed the reasons for refusal of the larger proposal.
 4. Both proposals were refused on the grounds that they would represent over-development of the site. The refusal of the smaller proposal refers specifically to its effect on the amenities of nearby occupiers. The planning policies cited and the planning officer's reports in both cases refer to the effect of the proposals on the character and appearance of the area as well as their effects on the living conditions of neighbouring residents. An additional reason for refusal on the larger scheme related to the provision of a studio flat and that reason was addressed in the smaller proposal.
 5. The Council considered the overall scale of the proposals in both cases in terms of the proportion of the site to be developed, the height of the proposals and the extent to which they would project to the rear. In both cases the proposals were found to be out of scale with the adjacent property at 17 Marischal Road and I have found similarly in my decisions on the appeals. In considering the overall scale of the proposals it was necessary for the Council to consider the development as a whole and not just the effect of each storey in isolation. There is no evidence that the Council acted inconsistently in its assessment of
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each proposal. Its use of the word “mass” in the reason for refusal of the smaller scheme is consistent with such overall consideration of scale.

6. Pre-application advice was given by the Council to the effect that the scheme as presented at that stage would have been too large. The smaller of the two proposals was intended to follow that advice. However in making its decision the Council found that the proposal was still too large and thus that the reduction in its size had not been sufficient to overcome its concerns. This demonstrates a consistency of approach on the part of the Council rather than inconsistency. For these reasons it is not the case that the scheme for 5 flats overcame the Council’s objections to the 6 flat scheme.
7. The circumstances of the permitted development at 19 Marischal Road are clearly different from those of the appeal site in terms of the relationship to adjacent development and I find no inconsistency with the Council’s decision in respect of that site.
8. For the above reasons I find that there has been no demonstrable inconsistency on the part of the Council. Any informal opinions expressed by planning officers regarding the acceptability of the proposed smaller scheme would not alter this because such views are informal and do not restrict the formal decision making process.
9. For these reasons I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated.

Nick Palmer

INSPECTOR