
Costs Decision

Site visit made on 10 October 2016

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 12 December 2016

Costs application in relation to Appeal Ref: APP/W5780/W/16/3154172 480-482 Ley Street and land at Lynn Road, Ilford, Redbridge IG2 7BZ

- 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 Ley Properties Ltd for a full award of costs against the Council of the London Borough of Redbridge.
 - The appeal was against the refusal of planning permission to demolish 3 x existing single storey car showroom and MOT workshops, comprising 3050sq m and the redevelopment of the site to provide 71 residential units comprising: 26 x 1 bed; 40 x 2 beds, 3 x 3 beds and 2 x 4 beds within part 3, 4 and 6 storey blocks. The proposal includes an internal courtyard space to be provided on the ground floor and underground car parking and cycle storage facilities together with a resident gymnasium facility measuring 109 Sq m.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, the Planning Practice Guidance (PPG) advises that costs may only 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 PPG makes it clear that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications or by unreasonably defending appeals.
 4. The planning officer recommended that the planning application be refused for one reason only, relating to affordable housing provision. The committee however considered that the proposal would also be harmful to the character and appearance of the area and the living conditions of nearby occupiers, and refused the planning application accordingly. Planning authorities are not bound to accept the advice of their officers, but if such advice is not followed, authorities will need to show reasonable grounds for taking a contrary decision and produce evidence to substantiate each reason for refusal on appeal.
 5. In terms of the scheme's impact on the character and appearance of the area, I consider that the committee would have made an informed decision on this matter based on a detailed officer report. Matters of design and impact are subjective and I am satisfied that the Council substantiated its concern within evidence. It did not act unreasonably in this regard. The applicant's costs in
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defending this aspect of the appeal proposal were a necessary part of the appeal process.

6. Although the committee did not agree with the planning officer in respect of the effect of the scheme on the living conditions of nearby occupiers, again I am satisfied that it took its decision based on a detailed officer report which included representations made by interested parties. It was not unreasonable of the committee to come to a different view to its officer in this regard. I accept that it was not demonstrated how the Council based its assessment on the parking stress of the area, other than a broad indication that the available spaces were limited. However, having regard to local resident's concerns, it was not unreasonable of the Council to place significant weight on this matter in its consideration of the planning application. The parking surveys were a necessary part of the appellant's evidence and I am satisfied that unnecessary or wasted expense in this regard was not incurred. The work undertaken in respect of living conditions more generally was also a necessary part of the appeal process.
7. However, in respect of affordable housing provision, although the Council indicated there was a pressing need for such housing in the area, it appeared to place little weight on the applicant's viability appraisal and the assessment of this by the Council's own consultant. Little regard also seems to be had to the policies of the development plan which makes an allowance for a lesser provision of affordable housing on development sites where it can be demonstrated that a scheme would not be viable.
8. On this basis, and in the absence of substantive evidence to demonstrate otherwise, I find that the Council acted unreasonably in refusing the planning application on this ground. The applicant has therefore been put to unnecessary and wasted expense in the appeal process. An award of costs is justified in this case.

Costs Order

9. 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 London Borough of Redbridge shall pay to Ley Properties Ltd, the costs of the appeal proceedings limited to those costs incurred in respect of the provision of affordable housing, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to the London Borough of Redbridge 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 Costs Office is enclosed.

R C Kirby

INSPECTOR