
Costs Decision

Site visit made on 15 November 2016

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 23 December 2016

Costs application in relation to Appeal Ref: APP/U5930/W/16/3156630 13 Queens Lodge, Queens Road, Leytonstone E11 1BA

- 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 David Binns of Homecare Limited for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The appeal was against the refusal of the Council to grant planning permission for the conversion of property from care home to 5 flats (1 x 3 bed, 2 x 2 bed and 2 x 1 bed) with alterations to frontage (amended plans) without complying with conditions attached to planning permission Ref 143507, dated 23 March 2016.
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Decision

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

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 appellant's case is that the Council has behaved unreasonably, by imposing conditions that should not have been and subsequently refusing to remove the disputed conditions when given the opportunity to, which has in the appellant's opinion, resulted in wasted expense.
4. The Council's response is short, but maintains that both conditions subject of this appeal are necessary and reasonable.
5. In terms of condition No 4, Council Officers in their report to the Planning Committee highlighted the difficulties associated with the existing ramp in terms of its gradient. Although Members are entitled to exercise their judgement and form a different opinion to their Officers, they added this condition despite the committee report clearly highlighting the difficulties associated with the ramp and with regard to the scheme before them. Even though the access ramp is relatively steep, the condition that was attached was flawed. The condition would not fulfil the reason for attaching it in the first place and the appellant did not have any realistic opportunity to comply with it, despite the Council's approval of a stepped access¹. Even when presented with an opportunity to remove or vary the condition, the Council resolved that the

¹ Council Application Ref: 162728

condition as originally drafted was necessary. Despite the suggested variation, this also seeks to resolve a pre-existing problem. The Council's actions have caused the appellant to pursue this appeal unnecessarily as a consequence.

6. Although, the concerns of the Council and indeed the occupants in 11 Queens Road are valid planning considerations, in terms of the effect the flats would have on the privacy of No 11, it appears to me that, in attaching condition No 3, the Council did not draft the condition with sufficient precision and regard to the specific circumstances of the case. While, a view was formed regarding the previous use of the building in relation to its new use, this view seems to have been applied to every window regardless of size or position in the elevation and the relationship to No 11. The flank elevation of No 11 does have a number of windows, but the relationship to them is very varied and regard does not seem to have been given to this.
7. Nevertheless, the appellant's case presented to the Council was not as detailed as that lodged with the appeal. Whilst, I have found that condition No 3 does not meet the relevant tests, in light of the much more detailed appeal submissions by the appellant, I do not consider the Council was unreasonable in arriving at a judgement, given the appellant's case focussed on their ability to sell the flats if obscure glazing was inserted.
8. In conclusion, I find that the appellant has been put to unnecessary expense as a consequence of the Council's unreasonable behaviour in respect of condition No 4. This stems from preventing development that should have been permitted. A partial award of costs to cover the expense incurred by the appellant in appealing against condition No 4 is justified.

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 Waltham Forest shall pay to Mr David Binns of Homecare Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to condition No 4; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to London Borough of Waltham Forest, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew McGlone

INSPECTOR