

Costs Decision

Hearing held on 8 December 2016

Site visit made on 8 December 2016

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 23rd February 2017

Costs application in relation to Appeal Ref: APP/G5180/W/16/3155059 Queen Mary House, Manor Park Road, Chislehurst BR7 5PY

- 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 Your Life Management Services Ltd for a full award of costs against the Council of the London Borough of Bromley.
 - The hearing was in connection with an appeal against the refusal of planning permission for the demolition of the existing building and redevelopment to form 52 Assisted Living apartments (C2 use) including communal facilities, parking and landscaping.
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Decision and Costs Order

1. The application for an award of costs is allowed in the terms set out below.
2. 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 Bromley shall pay to Your Life Management Services Ltd, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
3. The applicant is now invited to submit to the Council of the London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Reasons

4. The costs application and the Council's response were both submitted in writing.
 5. 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.
 6. Paragraph 134 of the National Planning Policy Framework (the Framework) says that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The Council did not undertake such an exercise, arguing that it was unnecessary to do so because the proposal would lead to substantial harm.
 7. The Framework does not define what is meant by "substantial harm", but
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advice is given in the Planning Practice Guidance, saying whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the Framework. It goes on to say that in general terms, substantial harm is a high test, so it may not arise in many cases. In respect of conservation areas, the Guidance focusses on the demolition of unlisted buildings, but the principle that it is the contribution to the significance of the conservation as a whole is relevant here.

8. The Courts¹ have also examined the meaning of “substantial harm” and ruled that it equated to an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced. I have found that the proposal would at least preserve the character and appearance of the conservation area.
9. In comparison to the vast size and varied character of the conservation area with its wealth of features of heritage value, a single building on a relatively minute part of the area cannot be said to “very much reduce the significance of the conservation area as a whole”, particularly where it would be surrounded by extensive tree and shrub cover. In my view, this was an unreasonable stance to take, unsubstantiated by evidence.
10. Thus, in finding that there was harm, the Council could only reasonably have concluded that it was “less than substantial harm”. In such circumstances the harm should have been balanced against public benefits. Not least of these undisputed benefits is that the proposal would meet a critical demand for older persons’ accommodation for which there is insufficient supply in the borough, falling well short of targets in the London Plan.
11. Whilst the officer report clearly referred to the benefits of the proposal, it did not undertake the required balance because officers recommended the application for approval, finding no harm to the conservation area. Members were entitled to come to a different view, subject to there being reasonable grounds for doing so, but it is still necessary to apply the paragraph 134 test before doing so. There is no evidence that the Council undertook such a balance, either in refusing the application, or in its appeal submissions. Given the clear expectation of the Framework that such a balance should be taken, I consider that this amounts to unreasonable behaviour.
12. The Planning Practice Guidance indicates 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. It gives examples of such unreasonable behaviour, which includes 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.
13. Although I have found that the proposal would result in no harm to the conservation area, I do not regard it unreasonable for the Council to have arrived at a different view. However, it was necessary to weigh the degree of harm against the benefits of the proposal. Had such an exercise been taken, with an objective analysis of the facts, I consider it likely that the application would not have been refused, and the appeal could have been avoided. The appellants were therefore put to unnecessary cost in bringing the appeal.

¹ Bedford Borough Council v Secretary of State for Communities and Local Government, Nuon UK Ltd [2013] EWHC 2847 (Admin)

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

JP Roberts

INSPECTOR