
Costs Decisions

Site visit made on 13 March 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 10 April 2017

Costs application in relation to Appeal A Ref: APP/U5360/W/16/3162575 55 New North Road, Hackney 3162575

- 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 Euro Salamis Limited for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal of planning permission for alterations and rear extension to the existing building to provide 4 no. additional flats.
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Costs application in relation to Appeal B Ref: APP/U5360/W/16/3162576 55 New North Road, Hackney 3162575

- 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 Euro Salamis Limited for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of rear extensions to facilitate the creation of three additional self-contained residential units. Associated works including creation of side terraces and provision of ground floor cycle parking (revised scheme).
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Decisions

1. The applications for awards of costs are refused.

Reasons

2. The Government's Planning Practice Guidance (PPG) 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. These applications for full awards of costs in respect of two appeals on the same site are brought on both procedural and substantive grounds.
 3. In terms of the procedural grounds firstly, in respect of Appeal B the applicant alleges that the Council failed to explain why a decision was not made within the relevant time limit. Secondly, the applicant considers that the Council introduced fresh and substantial evidence at a late stage necessitating extra expense for preparatory work, and has prolonged the proceedings by introducing a new reason for refusal. In terms of the substantive issues, the applicant considers that the Council's statement of case is vague and generalised, containing inaccurate assertions unsupported by objective
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analysis, and based on out of date policies; that some of the Council's objections to the scheme could have been addressed by the attachment of conditions; and that as a consequence the Council has prevented or delayed a development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.

Failure of Determination

4. Taking the procedural grounds firstly, the planning application in respect of Appeal B was validated by the Council on 12 August 2016. I note that the Council in an e-mail of 20 September 2016 informed the applicant of the necessity for advertisement of the planning application arising from the appeal property's adjacency to a listed building. This communication made it clear to the applicant that in the light of the Council's duties in this respect there would be a consequent delay in determination. In an e-mail of 27 October 2016, the Council officer dealing with the application indicates an intention to address the application the following week.
5. The assessment of the effects of development proposals on the setting of listed buildings is a statutory duty by virtue of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and as such, it would be reasonable for the Council to have systems in place to ensure that listed buildings were identified at an early stage in the determination of a planning application. In the case of Appeal B, over a month had passed between validation and the Council informing the applicant of the listed status of the building, and the necessity to advertise the appeal. Whilst this was a clear oversight in this case that led to an unreasonable delay in determination of the application, the Council did make the applicant aware of the reason for this. Moreover, the Council's draft decision on appeal scheme B makes it clear that it was minded to refuse the planning application. As a consequence, I consider that an appeal would have been necessary in any event, and thus I detect that no wasted or unnecessary expense has occurred as a result of this delay.

Fresh and Substantive Evidence at a Late Stage

6. The Council's communications with the applicant in respect of Appeal B made it clear well in advance of the submission of the appeals that No 53 is a listed building, and thus it would be reasonable for the applicant to conclude due to the statutory duty imposed on decision-takers by virtue of section 66 that the effects of the proposed developments on the setting of the listed building would be matters material to both appeals. As the effects of the development proposed in Appeal A on the character and appearance of the host dwelling, and those of its surroundings were the basis of one of the reasons for refusal, the effect on the setting of No 53 is a consideration that is part and parcel of an assessment of these effects; the Council amplified its case in these respects in its appeal statement to reflect the listed status of No 53. Thus due to the timing of the Council's e-mail, and the nature of the Council's original objections to appeal scheme A, the listed status of No 53 does not constitute fresh and substantial evidence at a late stage, or a new reason for refusal at appeal stage, which has prolonged the proceedings at appeal stage.

Council's Statement of Case

7. Moving on to the substantive issues, whilst the Council's statement of case does not explicitly follow the relevant Historic England guidance on the setting of heritage assets, it clearly outlines No 53's inter-visibility with, and relationship to, the appeal property, and then assesses the level of harm it considers is caused to its significance against the public benefits of the proposed developments. This is an approach consistent with the National Planning Policy Framework (the Framework), and as a consequence, I consider that the case was not vague or generalised, and it is clearly based on an objective analysis of the main issues. Moreover, in this respect the Council clearly concluded that the proposed developments would conflict with the Framework and development plan policies, and thus it is clear that the Council did not prevent or delay developments that it considered to be in accordance with its development plan and the Framework.
8. Whilst I note that the decision notice in respect of Appeal A refers to an older version of the London Plan¹, I have not been supplied with any substantive evidence to suggest changes to any of the policies referred to may have led the Council to reach different conclusions on the proposed developments. Moreover, whilst some of the development plan pre-dates the publication of the Framework, this is not sufficient in itself to render its policies out of date, and I have been supplied with no substantive evidence to suggest why the Framework should be given more weight than the development plan in this instance. As a consequence, I can find no unreasonable behaviour on the part of the Council in respect of this matter.

Conditions

9. I have considered whether conditions could have addressed the reason for refusal relating mutual overlooking between appeal scheme A and adjacent buildings. Whilst I have come to a different view to the Council in regards to the harmfulness of mutual overlooking in respect of the proposed development in my decision letter, this is a matter of planning judgement. In its determination of the original application, given the relatively close relationship of the proposed development and adjacent buildings it was reasonable for the Council to conclude that overlooking could occur. Furthermore, the Council considered that a condition requiring screening at the appeal site to reduce overlooking could cause harmful effects to the living conditions of the proposed development's future occupants. Again this was a matter of planning judgement, and not an unreasonable conclusion to arrive at in the light of the site specific circumstances. Accordingly, and taken together with my findings on the Statement of Case given above, I consider that the Council did not delay or prevent development that the attachment of conditions could render acceptable in planning terms, or that should have been clearly permitted in line with the development plan and other material considerations.

Conclusion

10. Consequently, for the reasons given above, whilst there was an unreasonable delay in the determination of Appeal B due to the Council's failure to recognise the listed status of No 53 at an appropriate stage, I have found that no unnecessary or wasted expense occurred at appeal stage as a result of this.

¹ The London Plan: The Spatial Development Strategy for London-Consolidated with Alterations since 2011

Moreover, I have found no unreasonable behaviour in respect of the other procedural or substantive grounds that underpinned this application. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated and accordingly, these applications for costs fail.

G J Fort

INSPECTOR