
Costs Decision

Site visit made on 26 April 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 2nd June 2017

**Costs application in relation to Appeal Ref: APP/E5900/W/17/3167339
Harley House and Campion House, Frances Wharf, Burdett Road, London,
Tower Hamlets E14 7EL**

- 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 Chaim Cik, Frances Wharf LLP for a full award of costs against the Council of the London Borough of Tower Hamlets.
 - The appeal was against the refusal of planning permission for roof extensions at 7th floor and 9th floor levels to provide 6 new residential units of class C3 along with reconfiguration of 1 existing unit.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and has thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Paragraph 49 of the PPG states 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.
 3. Examples of this, set out in paragraph 49 of the PPG and of relevance to the points raised by the appellant in the application for an award of costs include the failure to produce evidence to substantiate each reason for refusal on appeal.
 4. The planning application which is the subject of the appeal was considered by the Council's Planning Committee which determined that planning permission should be refused against the officer recommendation. However, members do not have to accept their officer's advice and this in itself does not constitute justification for an award of costs so long as the reasons for refusal are precise and the justification for the refusal is clear.
 5. The first reason for refusal is complete, precise and relevant to the proposed development and clearly states that the development, by reason of its excessive density, constitutes overdevelopment of the site, which is exhibited by the resulting inadequate access to sunlight and daylight for neighbouring residential properties. The Council's statement elaborates on this with reference to the relevant density ranges set out in the London Plan (Policy 3.4), the Core Strategy (Policy SP02), the Housing SPG. It considered that the proposal did not meet the qualitative concerns set out in paragraph 1.3.51.
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Whilst I have reached a different conclusion, it was not unreasonable of the Council to reach this judgement.

6. The second reason for refusal is complete, precise and relevant to the proposed development and clearly sets out the harm which the Council considers would arise from the proposed development to existing residents in terms of sunlight and daylight and unacceptable levels of noise, vibration and dust pollution during construction. It also refers to the relevant development plan policies and national policy.
7. At the time the Council determined the application a daylight/sunlight assessment had not been undertaken for one of the units. Furthermore, concerns regarding disruption to existing residents during the construction phase were legitimate concerns raised in an adequate manner. Whilst I have reached a different conclusion it was not unreasonable for members to raise these concerns.
8. The third reason for refusal is complete, precise and relevant to the proposed development and makes reference to the relevant development plan policies. As I state in my Decision, criterion 4 of Policy DM3 (4) is open to interpretation. Consequently, whilst I have interpreted the policy in a different way to the Council it was not unreasonable for the Council to reach this view. Accordingly, this consideration does not in itself make the Council's decision unreasonable.
9. The fourth reason for refusal is also complete, precise and relevant to the proposed development and makes reference to the relevant development plan policies and national guidance. Whilst the Council's case is limited, it is nevertheless, understandable. An element of judgement is required in making a planning decision where the effect of development on the effect on the character and appearance of an area and a Conservation Area is at issue and I consider that there was reasonable scope for alternative viewpoints to be held.
10. Overall, while I have found the scheme to be acceptable, the Council raised legitimate concerns in an adequate manner. I, therefore, consider that the reasons for refusal are substantiated. Accordingly, it did not act unreasonably in relation to these issues.
11. I conclude that the Council has not acted unreasonably. In these circumstances, it is not necessary to consider the question of any expense incurred. Since unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, the application cannot succeed.

Caroline Mulloy

INSPECTOR