

Costs Decision

Hearing Held on 3 May 2017

Site visit made on 4 May 2017

by Beverley Wilders BA (Hons) PgDurp MRTPI

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

Decision date: 06 June 2017

Costs application in relation to Appeal Ref: APP/Y5420/W/16/3162812 86 Victoria Road, Hornsey, London N4 3SW

- 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 Jon Davis (Indigo Scott) for a partial award of costs in relation to the amended reason for refusal 1 and a full award of costs in relation to the substance of the case against the Council of the London Borough of Haringey.
 - The hearing was in connection with an appeal against the refusal of planning permission for the demolition of the existing buildings and redevelopment to provide 9 residential units (Class C3) with associated access, parking and amenity space provision.
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Decision

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

The submissions

2. The appellant's case was made in writing. The Council's response was made orally at the hearing, and the appellant also made some further points orally. Details of the oral submissions are set out in the Annexe at the end of the decision.

Reasons

3. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 046 states that awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
 4. Paragraph 047 of the NPPG states that examples of unreasonable behaviour which may result in a procedural award of costs includes withdrawing any reason for refusal or introducing a new reason for refusal.
 5. Paragraph 049 of the NPPG states that examples of unreasonable behaviour by local planning authorities with respect to the substance of the matter under appeal includes preventing or delaying development which should clearly be permitted, failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
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6. There are a number of strands to the appellant's case. Firstly the appellant considers that the Council behaved unreasonably procedurally by amending the wording of the first reason for refusal at appeal and this led to the appellant incurring unnecessary and wasted expense.
7. Secondly it is stated that each of the Council's reasons for refusal relate to technical issues requiring the expertise of professional judgement and in relation to each issue the Council's decision makers rejected the professional judgement of their officers. In this case there had been extensive pre-application discussions and numerous amendments were made to the proposal following constructive discussions after the submission of the application such that officers were entirely supportive of the proposal. The appellant considers that the Council has failed to produce evidence to substantiate each reason for refusal on appeal and has made vague and generalised assertions about the impact of the proposal, which have been unsupported by any objective analysis. Extensive reference is made within the appellant's claim to the analysis and conclusions of officers as set out in the Council's Officer report to the Planning Committee.

Procedural

8. The first reason for refusal on the Council's decision notice dated 24 October 2016 specifically referred to accommodation within the basement floor. Consequently and understandably the appellant's statement addressed the concerns that had been raised by the Council regarding daylight levels within the basement.
9. However in its original Statement dated 6 February 2017 the Council stated that the reason had been incorrectly drafted and should in fact have referred to inadequate natural lighting to principal rooms, with the Council's concern specifically relating to a ground floor living/dining/kitchen room in unit 4. This was unreasonable behaviour by the Council and as a result the appellant in responding to the first reason for refusal as originally drafted, incurred unnecessary and wasted expense.
10. Though I note the Council's view that it should have been clear to the appellant that there had been a drafting error, it was not the responsibility of the appellant to check that the wording of each reason for refusal accurately reflected the minutes of the Planning Committee meeting and it is entirely correct that the appellant sought to address each reason for refusal within their statement. The amount of unnecessary and wasted costs that were incurred is not a matter for me to consider.

Substantive

11. I do not agree with the appellant that the Council's reasons for refusal relate to technical issues. Rather whilst I agree that the assessment of the impact of the proposal on the conservation area (CA) requires some analysis of its significance, it also involves a subjective assessment of the impact of the proposal on significance. Similarly the assessment of the adequacy or otherwise of existing and proposed living conditions involves an element of judgement.
12. It is clear that in submitting the application and in making amendments to the proposal during the application process the appellant was seeking to address

the concerns raised by Council officers and I note that the application was recommended for approval by officers. Whilst I have some sympathy with the appellant and appreciate that the outcome of the application will have been disappointing, Members of the Planning Committee were entitled not to accept the professional advice of officers on the merits of the proposal provided that a case could be made for the contrary view. As stated, the decision on the proposal is one which is a matter of judgement.

13. As can be seen from my decision letter, I agree that there were sufficient grounds to refuse planning permission. Whilst I do not agree with all of the Council's concerns and whilst I acknowledge that the Council's statement of case was relatively concise, the Council provided additional evidence during the hearing to amplify its case and I am satisfied that sufficient evidence was produced to substantiate each reason for refusal. However, for the reasons set out in my decision letter, I make a different judgement on some of the issues. I consider that it is clear from the Council's statement that in reaching its decision the Council acknowledged that the proposal would bring some benefits, not least that it would provide additional housing, but that these benefits would not be sufficient to overcome the harm resulting from the proposal.
14. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the NPPG has been demonstrated in relation to the amendment to the first reason for refusal, but not in relation to the substance of the case. Accordingly a partial award of costs is justified.

Costs Order

15. 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 Haringey shall pay to Jon Davis (Indigo Scott), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the amendment to the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to the London Borough of Haringey, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Beverley Wilders

INSPECTOR

Documents

- a) Costs application

Annexe: Submissions made orally at the Hearing

Council

17. It is clear from paragraph 6.7.6 of the Council's committee report that the only unit that wouldn't meet BRE guidelines is unit 4. The minutes of the committee meeting clearly refer to one of the ground floor living rooms in one of the units not complying with BRE standards. Paragraph 4.6 of the Council's Statement explained that an error had been made in transferring the objection into the drafted document. The error was corrected by the Council and it is extraordinary that the simple error wasn't obvious to the appellant. Wasted costs have to be quantifiable. Typing up an accepted position within the original statement can barely, if at all, be properly described as quantifiable.
18. It is incorrect to say that the Council's case is no more than vague and generalised assertions not supported by objective analysis. Oral evidence given at the hearing by both Mr Rose and Miss Robinson amplified the case set out in the Council's Statement and demonstrated a clear and considered approach. Mr Rose explained why and how the CA is distinctive and went on to set out an analysis of harm. Miss Robinson gave her professional judgement on the matter of living conditions and provided a clear analysis on why she relied in particular on the impact on specific properties and why the Council's position was justified in respect of unit 4.
19. The Council did consider the principal benefit of the provision of additional housing at paragraph 5.13 of its Statement against the harm to the CA and concluded that the harm would not be outweighed. It would have therefore been extremely academic to then set out the balance against CA harm and other harm as the conclusion had already been reached that the harm to the CA outweighed the principle benefit of additional housing.

Appellant

20. It is clearly relevant to consider the views of the Council officers dealing with the application. The relevant tests are set out in the PPG. The Council has had ample opportunity to set out its case prior to the hearing.
21. The Council's case hasn't shown any harm justifying refusal based on the living conditions of future occupiers but has relied on rigid numerical values.
22. Reliance on paragraph 5.13 of the Council's Statement shows that the Council cannot point to any overall balancing exercise.
23. The appellant had to rely on the reasons for refusal as no correspondence was received from the Council to explain that there had been an administrative error.