
Costs Decision

Site visit made on 21 June 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 20th July 2017

Costs application in relation to Appeal Ref: APP/Q5300/W/17/3168831 205-205B Baker Street, Enfield, London EN1 3LA

- 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 Mrs Shreya Patel, Maniland for full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the refusal of planning permission for conversion of part of ground floor from retail (A1) into 1 x studio flat (C3) involving two storey side and rear extension.
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Decision

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

Reasons

2. The 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.
3. The applicant asserts that the Council acted unreasonably in the time it took to determine the application and that better communication from the Council may have avoided the appeal altogether. In this regard, they consider that discussion around the appropriate use of conditions would have addressed the Council's concerns. In addition, they consider that the Council applied incorrect policies, contradicted itself between the delegated report and decision, failed to substantiate its reasons for refusal and relied on vague, generalised assertions about the impact of the proposal.
4. The Council has explained that delays in determining the application were partly as a result of the need for amended plans and that during the process the case had to be reallocated to another officer. While this is unfortunate, there is nothing to suggest that the applicant was not aware of the situation. In any event, I am not convinced that had the decision been made any earlier it would have resulted in a different outcome and more communication on substantive planning matters is unlikely to have resolved the Council's overriding concerns.
5. While I accept that matters related to cycle parking and refuse storage could have been addressed by condition, these are not the only objections to the proposal. It is unlikely that conditions would have satisfied all of the concerns,

particularly those relating to the internal size and layout of the development and the lack of private amenity space.

6. I see nothing inherently unreasonable in the Council's approach to its consideration of the effect on living conditions of future occupants. While the proposal may meet the quantitative internal space standard, this is not necessarily determinative in deciding whether a satisfactory living environment can be created. There are other factors involved, and the policies relating to these in the London Plan, Enfield Core Strategy and Enfield Development Management Document are fairly generic and consistent with the requirements of the National Planning Policy Framework. While I have not accepted the Council's arguments, the issues considered in relation to living conditions are generally matters of planning judgement; references to potentially superseded standards and guidance do not necessarily alter this as it is the resulting effect which is under consideration not just adherence to the standard itself. In this regard, I consider the Council has fully substantiated their reason for refusal.
7. The same cannot be said of the Council's consideration of the effect of development on the vitality and viability of the local shopping centre and local employment. The development would have no effect on the proportion of A1 frontage in the centre and the Council's assertion that the reduction in floorspace would inevitably lead to the closure of the shop is not backed up with any substantive evidence. There is no recognition in the assessment that the A1 use class is able to accommodate a wide range of uses with differing size needs or any detailed analysis of other potential end users. The assessment of the loss of employment is also based on the premise that the unit would not be capable of accommodating any form of employment generating use. Again, this is not backed up by any analysis and thus relies on vague, generalised assertions. As such, I consider the Council has acted unreasonably in this regard.
8. The Council's first reason for refusal argues that the development would lead to the overdevelopment of the site and would be a "*harmful, incongruous and obtrusive form of residential accommodation that fails to integrate with or ultimately respect the pattern of development and residential character and appearance of the surrounding area*". However, in paragraph 10.3 of the officer report, it clearly states that the development would not have any significant impacts on the character and appearance of the area. There is a clear contradiction here. Equally, no harm was identified in relation to the effect of the development on the living conditions of other residents in the area or the amenity of businesses which implies that it would integrate with the area.
9. Whilst some of the concerns highlighted in this reason are related to the issue of living conditions, there is specific reference to the effect on the character and appearance in the reason. It is not clear therefore how the substantive conclusion of the first reason for refusal was reached or how the concerns over the perceived sub-standard quality of accommodation, lack of cycle parking and refuse storage directly relate to the development being considered incongruous, obtrusive or uncharacteristic of the general pattern of development. This was not expanded on in anything submitted with the appeal and thus I conclude that this reason for refusal is also based on vague, generalised assertions that have not been substantiated. This also represents evidence of unreasonable behaviour.

Conclusion

10. For the above reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Section 7(2) and Schedule 3 of the Countryside and Rights of Way Act 2000, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Enfield shall pay to Mrs Shreya Patel, Maniland the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's view that the development would have an unacceptable impact on the character and appearance of the area and the vitality and viability of the Baker Street Large Local Centre; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to London Borough of Enfield, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S J Lee

INSPECTOR