
Costs Decision

Site visit made on 20 June 2017

by Beverley Wilders BA (Hons) PgDurp MRTPI

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

Decision date: 28 July 2017

Costs application in relation to Appeal Ref: APP/X5210/W/17/3171930 6 Stukeley Street, London WC2B 5LQ

- 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 Derek Savage for a partial award of costs against the Council of the London Borough of Camden.
 - The appeal was against the refusal of planning permission for the demolition of a single storey white painted brick building and to develop two, 2 bedroom dwellings with a lower ground floor to each.
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Decision

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

Reasons

2. 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.
3. Paragraph 047 of the NPPG states that examples of unreasonable behaviour which may result in a procedural award of costs against a local planning authority includes delay in providing information or other failure to adhere to deadlines, introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen, prolonging the proceedings by introducing a new reason for refusal and the withdrawal of any reason for refusal.
4. 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 failure to produce evidence to substantiate each reason for refusal on appeal, refusing planning permission on a planning ground capable of being dealt with by conditions where it is concluded that suitable conditions would enable the proposed development to go ahead and requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework (the Framework) on planning conditions and obligations.
5. There are a number of strands to the appellant's case. Firstly the appellant considers that the Council behaved unreasonably procedurally by withdrawing

- reasons for refusal 4 (cycle parking) and 5 (wheelchair accessibility) at appeal, by the introduction of an additional reason for refusal relating to the basement development and by the introduction of new evidence at a late stage regarding S106 contributions and this led to the appellant incurring unnecessary and wasted expense.
6. Secondly it is stated that the Council refused planning permission on a planning ground capable of being dealt with by conditions (reason 4) and that it has behaved unreasonably by requiring the appellant to enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework (the Framework) on planning conditions and obligations with regard to the basement development and car free housing.
 7. The Council's decision notice dated 13 September 2016 contained six reasons for refusal including reason 5 relating to wheelchair accessibility. Consequently the appellant's statement addressed the concerns that had been raised by the Council regarding wheelchair accessibility.
 8. However in its Statement dated 31 May 2017 the Council withdrew reason 5 without any explanation for doing so. In its response to this application the Council makes reference to Policy H6 of the Camden Local Plan (CLP) and the requirement for new residential development to be accessible. Though I have had regard to the Council's response, reason 5 refers specifically to accessibility for wheelchair users and the withdrawal of the reason was unreasonable behaviour by the Council. As a result the appellant in responding to the reason for refusal incurred unnecessary and wasted expense.
 9. Reason for refusal 4 relates to a failure to provide four fully enclosed, secure and step free cycle parking spaces. Though I note that the appellant considers that the Council effectively withdrew this reason by seemingly accepting that the matter could be dealt with by a condition in its Statement, I agree with the Council that the reason was not withdrawn. However the Council appears to accept that it would be possible to provide suitable cycle parking within the proposed dwellings and as can be seen from my decision letter I agree and consider that had I allowed the appeal the matter could have been adequately dealt with by the imposition of a suitably worded condition. Consequently the inclusion of reason 4 on the decision notice was unreasonable behaviour by the Council and as a result the appellant in responding to the reason for refusal incurred unnecessary and wasted expense.
 10. In its Statement the Council stated that an additional reason for refusal relating to basement development had been omitted in error from the decision notice but stated that the appellant had been aware of this issue throughout the application process. Whilst I note that the Council's Officer report raised concerns about the fact that the Basement Impact Assessment (BIA) submitted with the application had not been independently verified and that the proposal was contrary to Policy DP27, these concerns did not translate into a reason for refusal. Consequently and understandably the appellant's statement did not address the basement development but rather focussed on the concerns that formed the Council's reasons for refusal. The addition of a further reason for refusal after the decision had been taken and the decision notice issued is unreasonable behaviour by the Council. This behaviour is likely to have resulted in the appellant incurring some unnecessary and wasted expense, though I note that no substantive evidence has been submitted by the

appellant in response to the Council's additional reason for refusal. However the amount of unnecessary and wasted costs incurred is not a matter for me to consider.

11. The Council's Officer report made reference to the need for a S106 agreement relating to car free development. In its Statement the Council stated a requirement for a S106 agreement to cover additional matters of affordable housing, a construction management plan and a contribution for an assessment of the proposed basement by the Council's Highways Team. Additional information and a revised draft S106 agreement was also submitted by the Council after the submission of the Statement to include affordable housing, though it appears that the revised draft S106 was sent to the appellant for comment prior to the submission of the Council's Statement. The Council did not receive a response back from the appellant until after the deadline for the Statement and was not therefore in a position to update the draft S106 until after the deadline for the submission of the Statement had passed. The appellant was given the opportunity to comment on the revised draft S106 and the Council's covering letter.
12. As can be seen from my decision letter, I have not made a finding on the draft planning obligation due to my findings on the main issues. However with regard to the submission of late evidence, it appears that whilst the revised draft S106 was submitted after the deadline for the Council's Statement, it was submitted at the earliest opportunity following consultation with the appellant. Under these circumstances I do not consider that the Council behaved unreasonably. In addition whilst there is clearly disagreement between the main parties as to whether certain matters such as the basement development, construction management plan and car free housing are required to be dealt with by a planning obligation or could be adequately dealt with by conditions, I do not consider that in setting out its case that a planning obligation would be required the Council has behaved unreasonably and in the absence of a finding on these matters it cannot be demonstrated that the appellant has incurred unnecessary and wasted expense.
13. At the time of determining the application the Council was relying on policies within the Camden Core Strategy 2010 – 2025 and the Camden Development Policies 2010 – 2025. None of these policies included a requirement for affordable housing contributions in relation to the proposal. However the Camden Local Plan (CLP) was adopted during the course of the appeal on 3 July 2017 and CLP Policy H4 expects a contribution to affordable housing from all developments that provide one or more additional homes. The Council raised the issue of affordable housing contributions in its Statement dated 31 May 2017. Whilst I note the appellant's view that the matter could have been raised sooner as at the time of the application the CLP was at an advanced stage of preparation, I note that no reference was made to the CLP in the Council's Officer report and I have seen no evidence regarding what stage the CLP had reached at the time that the application was determined. Under the circumstances I do not therefore consider that the Council has behaved unreasonably by referring to the requirements of Policy H4 in its Statement as by that time the CLP clearly was at an advanced stage, being due for adoption the following month.
14. Taking the above matters into consideration I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary

expense during the appeal process has been demonstrated. For this reason, and having regard to all matters raised, 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 Council of the London Borough of Camden shall pay to Mr Derek Savage, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the fourth and fifth reasons for refusal and in the relation to the additional reason for refusal relating to the basement development; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Council of the London Borough of Camden, 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