



Costs Decision

Site visit made on 21 November 2017

by **Rory Cridland LLB (Hons), Solicitor**

Decision date: 21 December 2017

Costs application in relation to Appeal Ref: APP/Y5420/W/17/3181183 303 Alexandra Park Road, London N22 7BP

- 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 Steven Sanford, EGL Developments Ltd for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal of planning permission for a proposal described as “retrospective planning application for amalgamation of Studios 3 & 4 and Studios 6 & 7 to form 1 x 1 bed 1 person flat and 1 x 2 bed 3 persons flat”.
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Decision

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

Reasons

2. Planning Practice Guidance (“the PPG”) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. An award of costs can be procedural or substantive. The PPG gives a number of examples of the types of behaviour which can lead to a procedural award of costs including (i) where there is a lack of cooperation with the other party as part of an appeal, (ii) where there is delay in providing information or other failure to adhere to deadlines, (iii) where a party fails to agree factual matters common to principal witnesses and (iv) where a party provides information that is shown to manifestly inaccurate or untrue.
4. In relation to (i), the appellant essentially argues that the Council has acted unreasonably by refusing to enter into meaningful discussions following its determination of the application. However, the behaviour complained of relates to matters outside the appeal process. Furthermore, the email correspondence indicates that, while the Council saw little benefit in entering into post-decision discussions, they nevertheless did engage positively with the appellant, responding to emails in a timely manner and setting out views on the options open to the appellant following its refusal. I do not, therefore, consider the appellant has sufficiently made out a case for an award of costs in this respect.
5. Likewise, in relation to (ii), although the Council failed to submit its statement of case on time, the delay in this case was minor. While I acknowledge the importance of the parties adhering to the set deadlines, I am not aware that it has directly resulted in any wasted expense on the part of the appellant. On the evidence before me, it appears to me that an award of costs on this basis

would be punitive and, as such, would fall outside the scope of the costs regime.

6. Turning then to (iii) and (iv), the appellant asserts that the Council has provided information that is manifestly inaccurate or untrue and has failed to agree factual matters common to witnesses of both parties. I do not agree with these assertions. The appellant has not identified the key factual matters to which it considers the Council has not agreed or the information which it considers to be manifestly untrue. Furthermore, I have seen nothing which would indicate that this was the case. On balance, I do not consider an award of costs on this basis would be justified in the present circumstances.
7. The appellant has also sought a substantive award of costs on the basis that the Council has (i) prevented or delayed development which should clearly be permitted; (ii) failed to produce evidence to substantiate each reason for refusal; (iii) used vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; (iv) acted contrary to well-established case law; (v) failed to determine similar cases in a similar manner; (vi) refused to provide reasonably requested information, when a more helpful approach would probably have resulted in the appeal being avoided altogether; and (vii) not revised their case promptly following the lodging of the appeal.
8. In relation to (i), (ii) and (iii), the flats formed from the amalgamated studios fall below the relevant minimum space standards. As my decision makes clear, this would be in conflict with a number of Development Plan policies. However, in view of the improved nature of the accommodation being provided, I consider there are material considerations which indicate that a departure from those policies is justified in this instance. However, this is a question of judgement and it is open to the Council to conclude otherwise. In doing so, they have clearly assessed the proposal against relevant policies and reached clear and cogent conclusions. While I may not agree with those conclusions, I do not consider they are, in themselves, unreasonable.
9. Turning then to (iv), the appellant essentially argues that, in failing to identify the fallback position correctly, the Council has acted contrary to planning law. However, the fallback position is unclear with considerable ambiguity remaining over what would constitute the present lawful use. Based on the evidence before me, I do not consider a case for an award of costs on this basis has been sufficiently made out. Likewise, in relation to (v), (vi) and (vii), I have seen no robust evidence which would indicate the Council has acted unreasonably in the manner suggested.
10. Accordingly, I do not consider the Council has acted unreasonably or that an award of costs would be justified in the present circumstances.

Conclusion

11. For the reason set out above, and having had regard to all other matters raised, I conclude that the application for an award of costs should be refused.

Rory Cridland

INSPECTOR