



Costs Decision

Site visit made on 12 July 2019

by E Brownless BA (Hons) Solicitor (non-practising)

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

Decision date: 16 December 2019

Costs application in relation to Appeal Ref: APP/U5360/W/19/3224537 343 Mare Street, Hackney, London E8 1HY

- 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 1707 Properties Ltd for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal of planning permission for a change of use of first, second and third floors from office (A2) use to residential (C3) use and erection of a roof extension to create 1x1-bed and 1x2-bed self-contained flats and associated external alterations including replacement of windows.
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Decision

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

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 PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters including preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. Informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all material factors.
5. The claimant takes issue with the Council's analysis of the heritage impact of the proposal based upon its brevity and inaccuracy. Notwithstanding this, I have similarly concluded that there would be 'less than substantial harm' caused as a consequence of the proposal. Therefore, the proposed development would be contrary to the development plan in terms of its policies concerning the preservation of heritage assets, in particular, Policies 7.4 and 7.8 of the London Plan (2016), Policy 25 of the London Borough of Hackney Local Development Framework Core Strategy (2010) and Policy DM28 of the Hackney Local Plan Development Management Local Plan (2015).
6. Notwithstanding this conflict, there exists a valid fallback position as a result of the extant planning permission¹, which the Council refer to within their Case

¹ Ref: 2017/0245

Officer Report and statement of case. It is clear that the Council had regard to this matter.

7. However, in considering this appeal, I have concluded that I attribute significant weight to the fallback position as a material consideration. This differs from the Council's position, however, I have reached the conclusion that the harm arising from the proposed scheme is no greater than the harm that would be experienced as a consequence of the approved scheme, based upon the evidence available to me at the time of this appeal and on my observations at the site visit. As such, I have found that a decision otherwise than in accordance with the development plan is appropriate in this instance. Therefore, to my mind, this is not sufficient to show that the Council acted unreasonably by failing to have proper regard to the existence of the fallback position.
8. I have had regard to the claimant's frustrations concerning the lack of time to address the concerns of the heritage and design officers. In addition, I understand the outcome of the application will have been a disappointment to the claimant. However, the Council were not under any obligation to accept any amendments to the proposal, nor to deny a request for a deadline extension, nor were they unreasonable in coming to their decision, albeit different to my own conclusions. Therefore, I do not find that the appeal could have been avoided.
9. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

E Brownless

INSPECTOR