



Costs Decision

Site visit made on 4 November 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Costs application in relation to Appeal Ref: APP/T5150/W/19/3226345 Willesden Green Garage, St Pauls Avenue, London NW2 5TG

- 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 Healey Development Solutions (Willesden) Ltd for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of planning permission for the demolition of MOT garage and erection of a part seven-storey and part four storey building with basement level to provide 70 self-contained flats (35 x 1 bed, 22 x 2 bed and 13 x 3 bed) with ground, third and fourth floor amenity spaces and ground floor play area, provision of basement car parking, cycle and refuse storage, alterations to vehicular accesses and associated landscaping.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that this unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appeal development was refused planning permission against officer recommendation. This in itself is not evidence of unreasonable behaviour. Elected Members are entitled to disagree with their officers. However, they must adequately substantiate their decision.
4. The applicant is concerned that the Council has not adequately substantiated its first reason for refusal and has provided no substantive analysis to support its position that the appeal development 'would have a detrimental impact on the flank wall (living room) window' of 75 St Pauls Avenue.
5. The applicant is also concerned that the Council has not considered the benefits of the appeal development, the original use of the living room as a bedroom, or that alternative (and unaffected) rooms exist in the ground floor flat, in reaching its conclusion.
6. The original use of the living room has ceased and is therefore irrelevant. The Council's officer report sets out why officers considered the proposal to be acceptable, on balance. However, the applicant's evidence¹ demonstrates that the proposal would adversely affect natural light levels in the living room and

¹ 2018 Daylight and Sunlight Assessment

consequently its usability. Whether this would be 'unduly detrimental' is a matter of planning judgement within the context of the scheme and based upon the evidence provided.

7. Furthermore, given the Council's planning judgement, its decision is consistent with Policy DMP1 (General Requirements) of the Brent Local Plan Development Management Policies 2016 and guidance contained within the Brent Design Guide Supplementary Planning Document 1 of November 2018.
8. In my main decision I have reached a different conclusion to the Council. Nevertheless, I am satisfied the Council has understood the scheme and its context and has adequately substantiated its position with regard to the first reason for refusal. It has not, therefore, behaved unreasonably.
9. The applicant was willing to enter into a planning obligation in accordance with the heads of terms agreed with the Council. Had the proposal not been refused planning permission there is no substantive evidence that such an agreement would not have been reached. I also note that following consideration of the appellant's subsequently submitted Unilateral Undertaking dated 4 November 2019, the Council has withdrawn its second reason for refusal.
10. However, at the time the Council refused planning permission, no such Unilateral Undertaking had been made. Consequently, the Council's second reason for refusal was manifestly not unreasonable.
11. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense as described in PPG, has not been demonstrated.

Conclusion

12. For the reasons given above, I conclude that an award of costs is not justified.

Andrew Parkin

INSPECTOR