



## Costs Decision

Site visit made on 1 September 2020

**by J Bowyer BSc(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28<sup>th</sup> September 2020**

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### **Costs application in relation to Appeal Ref: APP/N5090/W/20/3251295 New Budleigh, Popes Drive, Finchley, London N3 1QL**

- 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 Grey Oak 800 Ltd for a full award of costs against the Council of the London Borough of Barnet.
  - The appeal was against the refusal of planning permission for development described as 'material change of use of the outbuilding to Office (Use Class B1)'.
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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 where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given by the PPG of unreasonable behaviour include 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; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The Council's first reason for refusal relates to the location of the appeal site outside of the boundary of a town centre. The National Planning Policy Framework (the Framework) outlines a sequential approach to proposals for main town centre uses. Policy DM14 of Barnet's Local Plan Development Management Policies 2012 similarly requires that proposals for new office space follow a sequential approach which considers town centre sites before edge of centre sites. These requirements for a sequential approach are not subject to or dependent on any assessment of harm arising from a proposal.
5. As a consequence, development which is not in accordance with the sequential approach would conflict with the requirements of Policy DM14 and the Framework, irrespective of whether or not harm is identified to factors such as the vitality or viability of town centres. In this context, I do not find that it was unreasonable as a matter of principle for the Council to conclude that the

location of the proposal was unacceptable, even though no specific harm was identified to the vitality or viability of any named town centres.

6. I note the applicant's view that the Council's objections to the submitted Sequential Test (ST) are vague and inaccurate. The PPG outlines that application of the sequential test should be proportionate and appropriate for the given proposal<sup>1</sup>, but this is guidance on an overarching principle for the application of the test within the Framework. I agree with the applicant that it would be reasonable for a sequential test for the appeal proposal to be less onerous than a much larger development. Even so, it is essentially a matter of judgement as to what detail is required in a sequential test. The PPG does not prescribe what is proportionate or appropriate in any given case, nor indicate that this will relate solely to the area of search for alternative sites or that such an area should be reduced for smaller-scale proposals. I am not therefore persuaded that a proportionate and appropriate application of the test means that the geographical area of search should necessarily be reduced for smaller proposals, or that the Council's starting point of a borough-wide assessment runs counter to the PPG advice.
7. Moreover, there is little firm evidence to demonstrate that the services proposed to be accommodated on the site could not be provided from other town centres. While I have concluded that the travel patterns resulting from such an approach would be a disbenefit providing a compelling justification for the limited area of search for alternative premises within the ST, this is also a matter of planning judgement. The Council outlined clear and specific concerns in response to the ST, and given these factors I do not consider that its position regarding the location of the site was unreasonable or unsubstantiated.
8. Turning to the Council's second reason for refusal, the character of an area and contribution of any particular site to this, as well as the effect of a proposal are subjective matters. In this case, the site is to the rear of residential buildings on The Grove. The building on the site was approved as ancillary to 14 The Grove, and the site is currently part of the garden to No 14, and adjacent to the neighbouring garden to 16 The Grove. The wider context is mixed and the site is close to buildings on Popes Drive and an adjacent car park, but given this relationship I do not consider that the Council's appraisal of the site as contributing to the character of the surrounding residential area to be entirely unwarranted.
9. Notwithstanding the greater diversity of the nearby surroundings, I find that the Council offered reasoned concerns regarding the effect of the proposal, referring to its formal subdivision from No 14 and its commercial use which would be at odds with the nature and character of the residential area. These concerns were further supported with reference to relevant development plan policies. Although I have reached a different conclusion and found that the site is more closely associated and visually linked to the mixed commercial character of Popes Drive, I do not find that the Council's second reason for refusal was unjustified or unsubstantiated.
10. The applicant has also raised concern that the Council failed to carry out a balancing exercise taking account of material considerations relating to the wider benefits of the proposal. Planning law requires that applications for planning permission must be determined in accordance with the development

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<sup>1</sup> Paragraph: 011 Reference ID: 2b-011-20190722

plan unless material considerations indicate otherwise. The evidence before me does not demonstrate that the Council gave due regard in determining the application to the benefits advanced by the applicant, nor to the presumption in favour of sustainable development established by the Framework. In my view, this would amount to unreasonable behaviour by the Council. However, for an award of costs to succeed, such behaviour must also have resulted in unnecessary or wasted expense.

11. While I recognise the benefits put forward by the applicant, there is no firm evidence of an existing safety or security concern which would be addressed by additional surveillance from the site. The existing building is fairly unobtrusive, and while sympathetic, the proposed external alterations would be minor and would have limited visual impact beyond the appeal site. Employment, support for town centre vitality and viability, and the effective use of the site would also be somewhat constrained by the small scale of the proposal. These factors would limit the extent of the benefits arising from the development. The Council's conclusions regarding the unacceptability of the proposals were made with clear reference to development plan policies, and it has not been argued as part of the appeal that the weight to be given to these policies should be reduced depending on factors such as their consistency with the National Planning Policy Framework.
12. Given this context, I am not persuaded that it is clear the Council would have ultimately reached a different conclusion had these considerations been weighed against the asserted conflict with the development plan. While I consider the Council behaved unreasonably in failing to carry out this balance, I do not find the contention that the application would have been approved had the Council explicitly considered the benefits and the Framework to be substantiated. It has not therefore been demonstrated that the unreasonable behaviour has resulted in additional or wasted expenditure in the appeal process.

### **Conclusion**

13. I therefore find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, for the reasons given above, the application for a full award of costs is refused.

*J Bowyer*

INSPECTOR