



Costs Decision

Site visit made on 6 October 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st October 2020

Costs application in relation to Appeal Ref: APP/V5570/W/20/3244371 Pride Court 80-82 White Lion Street, Islington, London N1 9PF

- 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 Weldonbrook Limited for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the refusal of planning permission for change of use and enlargement of the ground floor to provide a 165.4 sqm restaurant (use class A3), refurbishment and reconfiguration of the upper floors and a fourth-floor extension to provide 1346.9 sqm office floorspace (use class B1) and a total of six residential units (use class C3) at third and fourth floor comprising 2 x 1-bedroom, 3 x 2-bedroom and 1 x 3-bedroom residential units with associated alterations to the White Lion Street façade.
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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 of unreasonable behaviour include a lack of co-operation with other parties; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; not determining similar cases in a consistent manner; and 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. The National Planning Policy Framework (the Framework) advises that local planning authorities should approach proposed development in a positive and creative way and work proactively with applicants, albeit not in the specific terms quoted by the applicant which reflect a previous iteration of the Framework. I note the applicant's disappointment that the Council did not allow the submission of additional information or amendments to the proposal which it considers could have overcome concerns, thus avoiding the need for the appeal.
5. However, Councils are expected to process applications in a timely way. In cases such as this where the Council conclude that a development would

- require substantive change to its scale and design to become acceptable, it is not unreasonable to proceed to decision without offering opportunity for amendment. The Council's evidence demonstrates substantial concerns with the proposal, including its effect on local character and living conditions for future occupiers of the site. Given the nature and strength of these concerns, I consider it highly unlikely that they could have been resolved through greater levels of communication without significant changes, which would have further necessitated re-consultation and likely delay to determination of the application.
6. In addition, the Framework also highlights the importance of pre-application engagement to resolve issues. The Council indicates that it offers a pre-application service, but that the applicant did not seek advice in relation to the appeal proposal.
 7. I have ultimately come to a different conclusion from the Council with regard to the effect of the proposal on local character and appearance. However, this is a matter of planning judgement. I find that the Council's evidence adequately substantiates its position with appropriate reference to relevant policies and guidance, and I disagree that its comments were overly emotive or disproportionate. Moreover, I concur with the Council that there would be unacceptable harm to the living conditions of occupiers of the development. Although the applicant disagrees with the Council on these matters, that is not evidence of unreasonable behaviour.
 8. The planning application included a viability assessment which concluded that no contribution towards affordable housing would be viable, as well as an initial undertaking from the applicant to pay for an independent review. However, the Council did not raise the matter of the review and associated payment until very late in the determination period, and having been notified of the Council's intention to refuse the application for other reasons, the applicant elected not to make payment to progress the review. The Council has not commented on the reason for the delay in raising viability with the applicant, and it is unfortunate that there was as a result no formal review of the viability assessment at application stage. The applicant was therefore unable to respond to the Council's review of viability until appeal stage. It would also have been helpful and more accurate if the Council's third reason for refusal clarified that the absence of a payment meant that viability information had not been subject to review, rather than suggesting that no viability information had been submitted.
 9. Be that as it may, for an award of costs to be granted, there must be evidence of both unreasonable behaviour *and* wasted or unnecessary expense. In this case, the costs associated with responding to the Council's viability information would still have been necessary. Although it may have been possible for the parties to reach agreement or narrow the scope of the appeal, the applicant has not needed to prepare additional new evidence that would not otherwise have been required to respond to the Council's concerns on this issue. I do not therefore find that the applicant has been put to unnecessary or wasted expense in the appeal process.
 10. The Council's fourth reason for refusal refers to the effect on Crossrail 2. I note that this was not raised as an objection when permission was previously granted for development on the site, but the development now proposed is materially different and the Council was therefore entitled to reach a different

conclusion. Nevertheless, neither the Council nor comments made by Transport for London on which the Council relies provide compelling evidence to demonstrate why this change would cause conflict with the delivery of Crossrail 2 when none was previously identified from development of the same site. As a result, I find that the Council has failed to substantiate the fourth reason for refusal of permission through the submitted evidence.

11. However, turning to the matter of wasted expense, the applicant's response to this reason for refusal has been fairly straightforward, relying in large part on information that was included as part of the original planning application submission. Although the applicant's evidence referred additionally to a more recent approval for development nearby, it did not entail extra assessment or indeed anything beyond a short rebuttal. It seems to me that in reality there has been so little extra work in responding on this matter that it can be regarded as 'de minimis'. In effect the appellant has quickly and easily rebutted the Council's position without wasting additional expenditure.
12. I therefore find that unreasonable behaviour 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