The Planning Inspectorate

Costs Decision

Site visit made on 15 September 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2020

Costs application in relation to Appeal Ref: APP/C5690/W/20/3252739
165-169 Lewisham Way, London SE14 6QP

- 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 Richard Sandler for a full award of costs against the Council of the London Borough of Lewisham.
- The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (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 or wasted expense in the appeal process.

3. The applicant considers that there was unreasonable behaviour by the Local Planning Authority (LPA) on substantive grounds, for the reasons considered below, which resulted in the applicant having to incur unnecessary or wasted expense in the appeal process.

4. As I have outlined in my Decision, the applicant's appeal turns on whether the proposal complies with Paragraph M.2(1)(d) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The requirements of this are as follows: whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use: (i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops), Class A2 (financial and professional services) or Class A5 (hot food takeaways) of that Schedule or, as the case may be, a building used as a launderette, but only where there is a reasonable prospect of the building being used to provide such services, or (ii) where the building is located in a key shopping area, on the sustainability of that shopping area.

5. In respect of part (i) of the above condition, on the information before me the appeal site does not fall within any of the specified uses. In respect of part (ii) in part, the LPAs reason for refusal states that the proposal would 'diminish the

function of the key shopping area and the services available to residents in the area and as such would be detrimental to the retail and commercial sustainability of the local area and the wider shopping area'. However, the Council's Officer Report ('OR') in assessing the local context and having regard to the National Planning Policy Framework, confirms that there is a 'healthy and appropriate mix of uses existing within the commercial parade to ensure the sustainability and vitality of this section of Lewisham Way and that the building is not located in a key shopping area'. As such, in part, the assessment in the OR does not support the reason for refusal.

6. Moreover, in determining two separate and recent applications for prior approval[1] at the appeal site, the LPA acknowledges that it did not consider the site to be in a key shopping area. Despite this, the LPA has failed to provide any cogent explanations for this inconsistent approach. Based on this and my findings in relation to the applicant's appeal, I have no clear reasons to conclude that the appeal site forms part of a key shopping area.

7. Whilst in its response to the costs application and the OR, the LPA refer to the requirements of the development plan, the full details of all relevant policies are not in the evidence before me. Nevertheless, while policies of the development plan are capable of being material considerations, a prior approval application/appeal should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004, or as though the development plan must be applied. This is because the principle of development is established through the grant of permission by the relevant provisions of the GPDO.

8. The LPAs reason for refusal also refers to the applicant's failure to submit robust marketing evidence to demonstrate that the current use of the ground floor unit of the property is not viable. However, the GPDO does not set out any such specific requirement. Notwithstanding this, the applicant has provided marketing information to show that the appeal site was marketed for a range of uses.

9. Although the LPA refers to an appeal decision (APP/C5690/W/19/3234088) in support of its approach in determining the prior approval application, the full details of this decision are not before me. Therefore, I am unable to draw any meaningful conclusions from this. In any event, I have determined this costs application on the basis of the evidence before me.

10. Drawing on the above reasons, the LPA has failed to clearly show how the proposal fails to comply with specific requirements of Paragraph M.2(1)(d) of the GPDO. As such, it has failed to produce evidence to substantiate its reason for refusal and has made inaccurate assertions about the proposal's impact, which is unsupported by any clear objective analysis. Consequently, the LPA has acted unreasonably by delaying development which should have been permitted. The applicant has therefore incurred unnecessary expense in pursuing the appeal.

11. Given the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

[1] DC/19/113801 and DC/19/113803

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Lewisham shall pay to Mr Richard Sandler, the costs of the appeal proceedings described in the heading of this decision.

13. The applicant is now invited to submit to the Council of the London Borough of Lewisham shall, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Aqbal

INSPECTOR