The Planning Inspectorate

Costs Decision

Site visit made on 15 September 2020

by M Seaton DipTP MRTPI

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

Decision date: 12 November 2020

Costs application in relation to Appeal Ref: APP/W5780/W/20/3248400
30 Argyle Road, Ilford, IG1 3BQ

- 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 A Mohammad (on behalf of Xchange S&L Ltd) for a full award of costs against the Council of the London Borough of Redbridge.
- The appeal was against the refusal of planning permission for two ground floor one bedroom one person flats, along with extension of the property at ground floor level.

Decision

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

Reasons

2. The Planning Practice Guidance 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.

3. The applicant contends that the Council has acted unreasonably by undertaking an inaccurate assessment of the development which led to the basis for the first reason for refusal. Furthermore, it is contended that the second reason for refusal relating to the impact on existing trees could have been adequately addressed by an appropriately worded condition.

4. As I have concluded in the appeal decision, and contrary to the clear identification of the units as 1 bed 1 person flats, it is evident that the Council has assessed the development on an assumption of them providing double bedrooms rather than single bedrooms as applied for. This is quite simply a fundamental error in the Council's assessment of the development for which there is no reasonable justification offered within the submitted evidence. Furthermore, the Council has compounded it's error by failing to address the clear and unambiguous evidence related to the occupation of the units as provided by the applicant during the application and appeal, and has maintained this unreasonable position during the response to the Costs Application. For these reasons, the Council has demonstrated unreasonable behaviour with regards the assessment of this aspect of the development.

5. The Council has not unreasonably drawn attention to the applicant's failure to identify the presence of trees at Section 10 of the Planning Application Form, although the Council's reason for refusal appears to have been premised

principally on the basis of a lack of information and a consequent assertion that the trees would be lost.

6. Whilst I acknowledge the Council's concerns and desire to see the trees retained, this must be balanced against their limited positive contribution to the character and appearance of the area and their unprotected status, but also the applicant's willingness to retain them. In these circumstances, I am not therefore persuaded that a dismissal of the use of an appropriate condition to secure the protection and retention of the trees has been properly reasoned and justified with there being no clear indication given that this was even considered as an alternative to the reason for refusal during the determination of the planning application. On balance, I find this failure to be the determining factor in concluding that the Council has acted unreasonably in this respect.

7. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. However, whilst I have ultimately disagreed with the Council on the issue of the acceptability of the outlook from Flat 1, the Council adequately substantiated its case in this regard and the determination of the appeal would still have been necessary in order to obtain planning permission. Therefore, I am satisfied that this would warrant only a partial award of costs.

Costs Order

8. 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 Redbridge shall pay to Mr A Mohammad (on behalf of Xchange S&L Ltd) the partial costs of the appeal proceedings as they relate to the part of the first reason for refusal regarding internal floorspace and the second reason for refusal related to trees. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.

9. The applicant is now invited to submit to the Council of the London Borough of Redbridge, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Seaton

INSPECTOR