



Costs Decision

Site visit made on 25 November 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020

Costs application in relation to Appeal Ref: APP/C5690/W/20/3245475 16-18 Sunderland Road, Forest Hill, London SE23 2PR

- 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 B Hoffman for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against the refusal of planning permission for extension of rear elevation balconies previously approved in association with planning application Ref DC/18/109664 to enable the creation of additional amenity space for occupiers of the four self contained 2 bed apartments situated at first and second floor level.
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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's application for costs is based on the alleged unreasonable behaviour of the Local Planning Authority ('LPA') and wasted expense, for substantive reasons, as considered below.
4. The PPG advises that LPAs are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include: 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.
5. The LPAs reason for refusal alleges that the proposal would reduce the useable floor areas of what it already considered to be substandard apartments and would therefore fail to provide an acceptable standard of accommodation for future occupiers.
6. However, in summary, the LPAs officer report presented to Planning Committee concluded that the loss of internal kitchen space would be minimised by the proposed doors opening outwards onto the balconies. Adding that, the minimal loss of kitchen space would be outweighed by the addition of the outdoor amenity spaces, which would improve the overall standard of accommodation for the

apartments. On this basis the LPAs professional officers, recommended that the application be approved, subject to conditions.

7. Planning Committee went against the advice of its professional officers. Planning Committees are not bound by a professional recommendation and are entitled to depart from this based on the facts of the case and planning judgment. Nevertheless, this is not an unqualified right, as members of a planning committee must be able to properly substantiate any concerns identified.
8. In light of its decision to refuse the application, the LPA assert that the apartments, as they existed at the time of the application did not meet the minimum space standards for dwellings, as set out in the London Plan and the Council's Development Management Local Plan. Furthermore, that these standards do not include private amenity space (such as balconies) within the gross internal area calculations for units. Nevertheless, these standards are applicable to new dwellings arising from a new build, conversion or change of use. The proposal before me is for the installation of balconies and other alterations to existing apartments. Therefore, these are of no relevance to the proposal.
9. Moreover, in determining the applicant's appeal and based on the LPAs professional officer advice, I have found that the proposed balconies would not have any significant effect on the size and functionality of the existing kitchen areas and would improve the overall quality and amenity of the existing apartments, which is consistent with the general aims of development plan policies, as cited in the LPAs decision, in respect of securing high quality design in new developments, including the layout of rooms to meet the functional requirements of future residents.
10. Consequently, although the LPAs reason for refusal refers to development plan policies, it has failed to clearly substantiate its assertions about the proposal's impact and any conflict with these policies. Therefore, 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.

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 B Hoffman 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, 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