
Costs Decision

Site visit made on 9 December 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2021

Costs application in relation to Appeal Ref: APP/N5090/W/20/3251132 The Old Print Works, Unit 1 and 1A, 25 Tapster Street, Barnet EN5 5TH

- 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 Tapster Street Properties Ltd for a partial award of costs against The Council of the London Borough of Barnet.
 - The appeal was against the refusal of the Council to grant subject to conditions planning permission for the demolition of existing building and construction of new 4 storey building comprising 8 flats and provision of 2 parking spaces.
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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 expense in the appeal process. Patently this is a two stage test. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
3. The applicant's case in seeking an award of costs relates to the second reason for refusal. This set out that the provision for off street car parking in the appeal scheme was insufficient, would lead to parking on the street which would affect the free flow of traffic and as such, along with other measures, a financial contribution was required to amend and existing Traffic Order (TO) that regulates the local Controlled Parking Zone (CPZ).
4. Whilst dismissing for other reasons, I found in my decision on the appeal case that there seemed very weak reasons to refuse planning permission on highway safety grounds, with specific regard to the free flow of traffic caused by an increase in on street parking. The main reason for this was that the Council's parking standards, for flatted developments, appeared to be a maximum and not a minimum. I therefore found it hard to reconcile an argument to suggest that delivering spaces under that standard could be

alleged to conflict with the development plan. In addition, it seemed reasonable to me that the location of the appeal site in relation to local services is a matter that should weigh heavily in favour of the appeal scheme in regard to parking provision. Albeit I recognise, for the purposes of a costs claim, that this is more a matter of planning judgement and weight than necessarily unreasonable behaviour.

5. Most importantly, and what would have perhaps justified a financial contribution from the applicant to amend a TO, the Council did not produce any additional evidence to suggest the areas around the appeal site were subject to high parking stress levels. This matter is mentioned in passing in their appeal statement but nothing further.
6. Some commentary on approved parking permits for the immediate area has been provided which appears to show that the number of issued permits outstrips the number of locally available spaces. However, this was only submitted with the Council's costs rebuttal and not as part of their appeal documentation. In addition, the allocation of permits does not give a sufficiently accurate representation of precisely where holders will park or even if they own a vehicle. Finally, the issuing of future permits is in the control of the Council as the issuer and as such they would have the power to refuse them if they feel too higher number have been issued when compared with the capacity of the local streets.
7. Taking these matters together, it seems to me that the second reason for refusal was unreasonable and thus unfair to the applicant having regard to the stance of the development plan and the lack of corroborative evidence to demonstrate that there would be any clear and demonstrable harm arising out of the proposed development on highway safety grounds. Whilst omitting this reason for refusal may not have obviated the need for the appeal, the applicant has clearly had to direct resources at arguing the reason through the appeal process. This has led to unnecessary and wasted expense.

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 Barnet shall pay to Tapster Street Properties Ltd, a proportion of the costs of the appeal proceedings described in the heading of this decision so far as they related to work in response to the second reason for refusal; such costs 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 Barnet, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Morrison

INSPECTOR