



Costs Decisions

Hearing Held on 21 October 2020

Site visit made on 4 November 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

Costs applications in relation to Appeal Ref: APP/Q5300/W/20/3245024 Longbourn, Forty Hill, Enfield EN2 9EU

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - **Application A** is by Ms H Tindale for a full award of costs against the Council of the London Borough of Enfield.
 - **Application B** is by the Council of the London Borough of Enfield for a full award of costs against Ms H Tindale.
 - The hearing was in connection with an appeal against the refusal of planning permission for the use of the premises for a mixed Class C3 (residential) with Class C1 (guest house and retreat use), with up to 6 bedrooms to be used for paying guests.
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Decisions

Application A

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

Application B

2. The application for an award of costs is refused.

Preliminary Matter

3. With regard to Application A, at the Hearing the applicant withdrew its 'Ground A' and maintained Grounds B, C and D. Ground A related to the absence of an internal inspection of the buildings at the appeal site by a Council officer prior to the Council's decision and withdrawal of this part of the costs application was in light of it not being possible for my site visit to include internal inspection of buildings. At the Hearing the Council supported the applicant's withdrawal of Ground A. I have therefore considered both applications on this basis.

Reasons

4. Planning Practice Guidance (PPG) 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.¹

Application A

5. In essence, the applicant's case is that the Council has referred to irrelevant policies and not referred to relevant policies, has not properly understood the

¹ Paragraph: 030 Reference ID: 16-030-20140306.

- appeal proposal with regard to residential use and guest house and green retreat use (including the description of development) and has not had due regard to third party representations in support of the appeal proposal and which were not made available to the applicant at the appropriate time with the Council's appeal questionnaire. On this basis, the Council has failed to substantiate its reasons for refusal, has made vague, generalised or inaccurate assertions and, including for reasons of inadequate communication, has prevented development that should clearly have been permitted which has led to the applicant incurring unnecessary costs in pursuing the matter through the appeal process.
6. PPG states that 'where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs'.² In addition, 'Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process'.³
 7. At the appeal Hearing the Council conceded that DMD Policy DMD23 is not relevant to the appeal proposal. However, in the context of the Council's decision and reasons for refusal it was not a significant or determinative matter, the Council did not pursue this policy in its appeal case and there is no evidence before me that the applicant's appeal case considered this policy in any detail. The other policies in the Council's reasons for refusal have relevance for the reasons that I have given in my appeal decision.
 8. The Council's appeal statement of case acknowledged that its reasons for refusal did not refer to LP Policy 3.14 but with regard to the loss of residential floorspace, the aim of this policy is broadly consistent with DMD Policy DMD4, which is included in the reasons for refusal and was considered in the applicant's appeal case (as was LP Policy 3.14 in any event). The Council's officer report refers to the provision of visitor accommodation and CS Policy CP12, as well as the equivalent DMD Policy DMD31 — the former was considered in the applicant's appeal case and the latter is referred to in the applicant's planning and heritage statement.
 9. It will be evident from my appeal decision that I consider that the scope of LP Policy 3.14, DMD Policy DMD4 and CS Policy CP4 go beyond consideration of residential floorspace to include residential 'unit', 'home' and 'family home'. I have also found that the Council reached a constrained interpretation of the development plan (CS Policy CP12 and DMD Policy DMD31) with regard to the location of the appeal site for a guest house use. In contrast to the Council I have given significant weight in the planning balance to the 'in principle' support that I find there is in these development plan policies for the appeal proposal.
 10. The 'Green Retreat' was explained in the appeal application. While the applicant's vision in this regard includes a 'health' dimension it is not intended to be a health or social care facility. Therefore, while the Council referred to CS Policy CP7 in its appeal statement of case it does not appear to have been material to its consideration of the application or its decision (it is not in the Council's reasons for refusal) and nor is it material to my appeal decision for the same reason.

² Paragraph: 050 Reference ID: 16-050-20140306.

³ Paragraph: 047 Reference ID: 16-047-20140306.

11. It was not good practice for the Council to amend the applicant's description of development without any prior discussion.⁴ However, notwithstanding the different form of words, the Council's description in its decision notice captures the essence of the applicant's proposed change of use to a mixed use and in this regard, is of no material consequence. Furthermore, whilst the words 'with up to 6 bedrooms to be used for paying guests' were omitted by the Council from its description, on the evidence before me, including the officer report, the Council was aware of this parameter of the appeal proposal, as am I.
12. I note that the officer report explained the appeal proposal to be a 'change of use from C3 residential use to C1 guest house and creation a self-contained 1 x 2 bedroom flat'. This form of words is materially different to even the Council's own description of development and it may therefore have been a distraction to the consideration of the appeal proposal by officers. However, this wording is absent from the Council's description of development in its decision notice, which is the basis on which it made its decision.
13. Notwithstanding my appeal decision, considering the above the Council was entitled to make the planning judgements that it did and on the evidence before me it appears unlikely that further communication would have altered the Council's position — ultimately it made the decision that it did and in that regard its reasons for refusal are clear and precise. Furthermore, I consider that the Council has substantiated its reasons for refusal and that it did not therefore prevent development that the applicant considers should 'clearly'⁵ have been permitted. These circumstances have led to the applicant reasonably having to pursue the matter through the appeal process and parties in planning appeals normally meet their own expenses.⁶
14. The officer report refers to 23 letters of support for the appeal proposal and confirms that it considered the content of these in making its decision. It is a matter of fact where these representations originated from and there is no evidence before me that 'scant regard' was given to any or that they were 'ignored'. However, on the evidence that is before me, it was not good practice for the Council to delay providing copies of these representations in the Council's appeal questionnaire, including statutory and other consultations. These documents were not therefore received in a timely manner by the applicant. Whilst the applicant nonetheless had the opportunity to consider these documents in its appeal case, this delay caused the applicant to unduly pursue the matter with the Council after the due date for receipt. The effect of the Council's lack of co-operation meant that the applicant incurred unnecessary costs in this regard.
15. For the reasons given, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense in the appeal process, as described in PPG, has been demonstrated with regard to the delay in providing copies of documents in the Council's appeal questionnaire and that a partial award of costs is justified.

⁴ Paragraph: 046 Reference ID: 14-046-20140306.

⁵ Paragraph: 049 Reference ID: 16-049-20140306.

⁶ Paragraph: 028 Reference ID: 16-028-20140306.

Application B

16. In essence, the applicant's case is that the appellant has unreasonably submitted a costs application and has made misleading, inaccurate and erroneous statements, including at appeal stage, with regard to the nature of the proposed development. On this basis, the appeal has resulted in unnecessary costs to the Council.
17. Having regard to PPG, I find that the appellant has exercised the right to make a timely application for costs⁷ and I note that in its final comments on the appeal the Council now accepts this position. I also find that the appellant's application has been made with due regard to matters that are reasonably within the scope of a costs application.
18. PPG states that 'an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding'.⁸ Furthermore, 'appellants are required to behave reasonably in relation to procedural matters on the appeal'⁹ including 'at the time of the planning application'.¹⁰
19. The applicant considers that the appellant received pre-application advice and was therefore 'fully aware' of the Council's likely views at that stage. However, on the evidence before me, the Council's pre-application advice concerned an earlier proposal for a proposed change of use from 'C3 residential to a C1 hotel/guest house'. That scheme was therefore clearly materially different to the appeal proposal that was eventually submitted to the Council and pursued by the appellant at appeal. Accordingly, there should not have been any confusion by the Council in this regard and the applicant's planning application (and appeal case) has substantiated why the applicant considers the appeal proposal accords with the development plan and the Framework. There was therefore a reasonable prospect that the appeal application could be granted planning permission by the Council or on appeal.
20. The appellant engaged with the Council at an appropriate time during the Council's consideration of the appeal proposal at application stage, including to provide additional plans seeking to clarify the proposed development and some information about the marketing of Longbourn for sale. I have acknowledged in my appeal decision that the appellant's precise intentions for occupation of the buildings at the appeal site are not yet fixed, but I have also explained why this is not a barrier to my appeal decision and granting planning permission.
21. The appellant did not accurately describe the proposed development when seeking to harness public support for the appeal proposal, but on the evidence before me this was in error, not an attempt to conceal or misconstrue details of the appeal proposal. Moreover, it did not materially undermine the substance of the representations received, which were mainly and broadly about the principles of the proposed use of the appeal site, not the precise number of residential units, and these were anyway matters on which the Council reached its own conclusions.

⁷ Paragraph: 035 Reference ID: 16-035-20161210.

⁸ Paragraph: 053 Reference ID: 16-053-20140306.

⁹ Paragraph: 052 Reference ID: 16-052-20140306.

¹⁰ Paragraph: 033 Reference ID: 16-033-20140306.

22. For the reasons given, I find that unreasonable behaviour by the appellant resulting in unnecessary or wasted expense in the appeal process, as described in PPG, has not been demonstrated and that a full award of costs is not justified, nor is a partial award for the same reasons.

Costs Order

Application A

23. 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 Enfield shall pay to Ms H Tindale, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the Council's delay in providing copies of documents in the appeal questionnaire.
24. The applicant is now invited to submit to the Council, 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.

Robin Buchanan

INSPECTOR