
Costs Decision

Site visit made on 2 March 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2021

Costs application in relation to Appeal Ref: APP/E5900/W/20/3256901 East London Central Synagogue, 30 - 40 Nelson Street, London E1 2DE

- 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 Andrew Cohen (Federation of Synagogues) for a full award of costs against the Council of the London Borough of Tower Hamlets.
 - The appeal was against the refusal of planning permission for proposed development described as 'existing vacant site: proposed construction of a 5 storey development comprising 4 No residential units'.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party where it has behaved unreasonably and this has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The application needs to clearly demonstrate that this is the case, as parties in planning appeals normally meet their own expenses.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes both procedural and substantive matters, including: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague and generalised or inaccurate assertions about a proposal's impact which are unsupported by an objective analysis; and refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The applicant's costs claim is on substantive grounds. Regarding the first part of refusal reason 1, the applicant states that the street frontage to Nelson Street, at ground level, is no different to that allowed previously at appeal¹. This was subject of a condition that railings be reused rather than a 1.8 metre wall, and a similar condition could have been used for the current proposal. In respect of the second part of refusal reason 1, the applicant states that a competent analysis of the site and its surroundings, together with a site visit,

¹ Appeal reference: APP/E5900/W/18/3197662

- would have shown that the proposal would not have an overbearing impact on the Synagogue, and so the refusal reason cannot be substantiated.
5. The Council responds that the scale of the proposal is clearly different from the approved appeal scheme, and with respect to the boundary treatment, the previous Inspector found this element of the proposal to be unacceptable and therefore sought to address this by way of condition. Were the Council to view the scale of the proposal as acceptable, a similar approach to conditioning the boundary treatment could potentially have been adopted.
 6. The proposed building would be taller than the previously approved appeal scheme, and considerations of scale, design, and the effect on the setting of the adjacent Synagogue, as a non-designated heritage asset, inevitably involves matters of subjective judgement. Although I have found in the applicant's favour, it was not unreasonable for the Council to reach a different view on this matter. The Council accepts that had it found the scale of the proposal to be acceptable, a condition could have been used to resolve the front boundary treatment. Therefore, I do not find that the Council has acted unreasonably in respect of refusal reason 1.
 7. Regarding refusal reason 2, the applicant states that a Daylight and Sunlight Study² was submitted, which was unequivocal in its conclusion that the Building Research Establishment guidelines³ (BRE Guidance) were observed. Further, the Council has relied on no objective evidence to support its assertion about inadequate daylight and sunlight. Had due weight been given to the study's findings, this issue would not have featured in the decision notice, and so the Council has acted unreasonably. The applicant submits that the previous appeal decision and/or a site visit inspection would have revealed that the primary window to the flat on the first floor at No 42 does not face the appeal site; and that the 2 windows that do face the appeal site light i) a staircase and ii) secondary window to the living space. The applicant contends that failing to give due weight to the previous appeal decision amounts to unreasonable behaviour.
 8. I note the Council's comment that the appeal scheme is materially different to the previously approved development due to the additional storey, however there is little to show that it had regard to the findings of the applicant's Daylight and Sunlight Study or the previous appeal decision. The study shows that whilst the proposal would cause a significant loss of light to 2 side windows serving the first floor flat at No 42 Nelson Street, one of the windows serves a non-habitable space and the other is a secondary lounge window.
 9. The Daylight and Sunlight Study demonstrates that the proposal would have negligible impact on the daylight received by the large rear lounge window of No 42, and the reduction in daylight distribution within the lounge would be modest and accord with the levels set out in the BRE guidance. The Daylight and Sunlight Study includes details of the plans on which the calculations were based and there is no evidence before me that the Council sought any clarification from the applicant. The Council has produced no cogent evidence to dispute the findings of the study.

² Prepared by Right of Light Consulting dated 16 January 2020

³ Building Research Establishment guide 'Site Layout Planning for Daylight and Sunlight: a guide to good practice, 2nd Edition by P J Littlefair 2011

10. Furthermore, there is little evidence that the Council had regard to the site characteristics set out by the previous Inspector, namely that the lounge has a dual aspect fenestration and the rear section of No 42 is single storey in height, which provides outlook from the rear facing window. Consequently, I find that the Council has failed to substantiate refusal reason 2, which amounts to unreasonable behaviour, and this has caused the applicant unnecessary expense in rebutting this matter.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to dealing only with the effect of the proposed development on the living conditions of the occupiers of the first floor flat at No 42 Nelson Street in respect of daylight and outlook, and therefore a partial 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 Tower Hamlets shall pay Mr Andrew Cohen (Federation of Synagogues) the costs of the appeal proceedings described in the heading of this decision; limited to those costs incurred in contesting the effect of the proposed development on the living conditions of the occupiers of the first floor flat at No 42 Nelson Street in respect of daylight and outlook, such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to the Council of the London Borough of Tower Hamlets, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Osgathorp

INSPECTOR