



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: 22 March 2021

Costs application in relation to Appeal Ref: APP/E5900/W/20/3258904 558 Commercial Road, London E14 7JD

- 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 Akthar Hussain 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 creation of additional storey above existing building and change of use of first and part ground floors from A2 to provide 2 flats (Class C3) (1 x 2 bed, 1 x studio flat) with associated cycle parking, refuse storage and private amenity space.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who 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 matters, such as delay in providing information or other failure to adhere to deadlines; 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; 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 both procedural and substantive grounds. The crux of the applicant's procedural claim is that the planning officer's original advice changed during the second planning application (the appeal proposal); the advice was misleading and introduced late refusal reasons. Further, the Council did not keep to the appeal timetable in respect of the submission of the questionnaire and supporting documents, which resulted in a delay. Regarding the substantive claim, the applicant states that for refusal reason 1 there is no material evidence that the proposed commercial unit would be unviable. In respect of refusal reason 2, Unit 1 should have been considered as a 2-

bedroom, 3 person single storey dwelling in line with the Nationally Described Space Standard¹. For refusal reason 3, the cycle store was designed to have level access and more than sufficient capacity for 4 cycles; and a planning condition could have been imposed to require the submission of further details.

5. Regarding the procedural claim, the power to award costs is limited to those necessarily and reasonably incurred in the appeal process. Furthermore, the PPG advises that costs awards cannot extend to compensation for indirect losses. Accordingly, issues relating to the handling of the planning application, including officer advice, is not a matter which I can take into account in my determination of this costs application. Moreover, regarding the delay in the Council submitting relevant appeal documentation, this has not directly caused the applicant unnecessary or wasted expense in the appeal process.
6. In respect of the substantive claim, as can be seen from my decision, I have found that the proposal would have no adverse effect on the vitality and viability of the Limehouse neighbourhood centre. However, it is inevitably a matter of planning judgement as to whether the commercial unit would be attractive for potential commercial occupiers having regard to factors such as floor space, layout and servicing, and I do not consider that the Council was unreasonable in how it made its decision.
7. In respect of refusal reason 2, the Council's interpretation of the minimum floor space standards was that Unit 1 should be regarded as a 2-storey dwelling. Whilst I have reached a different conclusion, I am satisfied that the Council has substantiated adequately the reasons for its decision, including that the proposed dwelling would include an internal staircase to an outdoor amenity space on a different level.
8. The issue relating to the size and configuration of the proposed cycle store and access is a matter of planning judgement, and I do not find that the Council was unreasonable in making its decision, including whether this was a matter that could be resolved through the imposition of a planning condition. The cycle store shown on the proposed plan could make a more efficient use of the space, however I am satisfied that this could be addressed through a planning condition.
9. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the costs application should fail and no award is made.

C Osgathorp

INSPECTOR

¹ Technical housing standards – nationally described standard March 2015