

Costs Decision

Site visit made on 23 February 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2021

Costs application in relation to Appeal Ref: APP/N5090/W/20/3263545 7 Shakespeare Road, London N3 1XE

- 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 Hayashi Developments Limited for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for the change of use of part of existing ground floor B8¹ warehouse into 4no. residential units (C3 use).
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Decision

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

Procedural Matter

2. For clarity, I have taken the address from the appeal form, as it would appear from the wider evidence that the site is not located within 'Finchley Central' as listed on the application form.

Reasons

3. The 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. A successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and parties in the appeal process are normally expected to meet their own expenses.
4. The PPG states² that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. The applicant submits that the Council has failed to co-operate or enter into meaningful discussions with the appellant during the determination of the application and thereby avoid the necessity of an appeal; Failed to provide consistency in decision making and failed to positively determine sustainable development which would accord with an up-to-date development plan without delay, in accordance with the National Planning Policy Framework and Section 38 of the Planning and Compulsory Purchase 2004 Act.
5. I have examined the details of exchanges between the applicant and Council and note the reference to telephone discussions that took place, and from the information before me it appears that the Council entered into dialogue with

¹ Town and Country Planning (Use Classes) Order 1987 (as amended)

² Paragraph 049

the appellant on a number of matters. Although, I have reached a different conclusion to the Council on the scheme, the details before me do not indicate whether further dialogue would have overcome the Council's objections so as to avoid the appeal.

6. My attention has been drawn towards a number of Judgements³ in support of the applicant's assertion that the Council failed to be consistent in its decision making. An approved planning application⁴ (the application) has been referenced by the applicant on this issue, which I note. However, whilst the application may not have been listed in the notable site history contained within the Officer's Delegated Report, I am not convinced that its inclusion would have necessarily altered the conclusion reached by the Council in this case, given the different locations of the appeal scheme within the wider site.
7. In respect of the assertion that the Council has failed to approve sustainable development without delay that clearly complies with relevant development plan policy, I consider that there were significant omissions from the planning application that were only presented at the appeal, such as a signed and dated planning obligation. In the case of the planning obligation, I note that the applicant was disputing the need for such a requirement in their submission, which I ultimately found to be essential in delivering car-free housing. Thus, on this issue alone, it is highly likely that the applicant would have still had to appeal in any event.
8. The fact that I have allowed the appeal and concluded that the development would comply with development plan and the Framework does not mean that the Council's decision to refuse the application was unreasonable. Thus, in this instance, the applicant has not therefore incurred unnecessary or wasted expense in pursuing the appeal.

Conclusion

9. For the above reasons, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, an award of costs is not justified.

W Johnson

INSPECTOR

³ North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P & CR 137; R (Midcounties Co-Operative Limited) v Forest of Dean District Council [2017] EWHC 2050, and Baroness Cumberlege v Secretary of State for Communities & Local Government [2017] EWHC 2057.

⁴ 20/0645/FUL