



Costs Decision

Site visit made on 30 November 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Costs application in relation to Appeal Ref: APP/N5660/W/20/3254825 72-74 Gipsy Hill, London SE19 1PD

- 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 Court Group Ltd for a full award of costs against the Council of the London Borough of Lambeth.
 - The appeal was against the refusal of the Council to grant planning permission for the partial demolition of existing structures and the change of use from B8/B2 use and conversion of the existing building into 1no. live-work unit.
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Decision

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

Reasons

2. 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.
3. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failing to produce evidence to substantiate each reason for refusal on appeal; and making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis¹.
4. There are several elements to the applicant's claim of unreasonable behaviour, which broadly fall within the scope of these examples. They relate to the four reasons for refusal ('RFR') set out in the Council's decision notice, and essentially boil down to the Council acting unreasonably in refusing the planning application. The issues raised in the applicant's claim were also central to determining the appeal, and as a consequence they are dealt with at some length in my main appeal decision.
5. In respect of RFR 1, the applicant claims that the Council did not take into account the potential impact of the existing lawful B2 and B8 uses of the appeal site, or the likely non-viability of refurbishing the premises for an alternative employment use. For reasons set out in my main decision, having

¹ Reference ID: 16-049-20140306

had regard to the arguments put forward by the applicant I found that there was no evidence that the previous uses of the appeal site had been unacceptable by way of noise, traffic generation, or any other consideration, and that the proposed development did not fall within the exceptions set out in Policy ED2 of the 2015 Lambeth Local Plan ('the Local Plan'). Furthermore, while the viability evidence was a relevant consideration in reaching my decision, it did not outweigh the need to comply with the development plan. I therefore do not find that the Council acted unreasonably in this regard.

6. In respect of RFR 3, the applicant is of the view that the Council should have taken account of amended plans submitted while the planning application was being determined. For its part, the Council states that the amended plans did not fully address its concerns about the design and appearance of the proposal, and considers that the amendments did not in any case make the development as a whole acceptable. For reasons set out in my main decision, I disagree with the Council's assessment in respect of the effect of the development on the character and appearance of the area. However, Paragraph 061 of the PPG advises that 'it is at the discretion of the local planning authority whether to accept such changes'², and while I reached a different conclusion to the Council on this matter that is not in itself an indication of unreasonable behaviour. Again, I do not find that the Council acted unreasonably in this regard.
7. In respect of RFR 4, the applicant claims that the proposed development would have represented an improvement in highway conditions compared to the current situation, and that the Council's refusal in respect of the impact on highways and parking was therefore unreasonable. For reasons set out in my main decision, I agreed with the applicant's arguments in respect of the reduction in vehicular movements and parking need likely to arise from the scheme. However, this does not signify that the reason for refusal was unsubstantiated. Furthermore, the Local Plan has a broader range of requirements in respect of addressing the impact of development on traffic, transport and parking, and on some other points I agreed with the Council's arguments. Once again, I do not find that the Council acted unreasonably in this regard.
8. In respect of RFR 2, it was clear from the evidence before me that the Council had failed to correctly measure the internal space of the proposed development. The Council revised their calculations in their appeal statement 'following further officer review' and acknowledged that the proposal exceeded the minimum size standards required, although no explanation was offered. This RFR was therefore based on an inaccurate assertion which was not substantiated at appeal. I therefore consider that in this regard the Council acted unreasonably in the terms set out in the PPG. However, in order to make an award of costs I need to be satisfied that this resulted in unnecessary or wasted expense.
9. Other elements of the Council's reasons for refusal were reasonable and substantiated, even if this was in terms which I did not always find persuasive. Even if the Council had not made an error in respect of the internal area of the development, it is clear from the evidence before me that the planning application would have been refused and the applicant would have been likely to appoint a consultant to fight the appeal. Addressing the living space matter

² Reference ID: 14-061-20140306

took up 11 short paragraphs, none of which appear to have required the production of new information, in a 34 page appeal statement. While it is regrettable that the Council acted unreasonably in putting forward an inaccurate and unsubstantiated reason for refusal, on the balance of the evidence before me I am not satisfied that this has resulted in unnecessary or wasted expense for the applicant.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector