



Costs Decision

Site visit made on 26 March 2021

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2021

Costs application in relation to Appeal Ref: APP/U5360/W/20/3251526 91 Lower Clapton Road, Hackney, London E5 0NP

- 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 JDZ Estates Ltd against the decision of London Borough of Hackney.
 - The appeal was against the refusal of planning permission for 'change of use of part A1 retail at ground floor rear to provide 1 x 2 bedroom flat. Demolition of roof terrace and creation of new mezzanine floor and new roof, new windows to ground floor rear and new bike and bin store. Retention of metal fence to rear'.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. The Appellant states that the Local Planning Authority (LPA) behaved unreasonably in that it:
 - Wilfully ignored the updated information submitted in response to previous reasons for refusal; and,
 - Prevented or delayed development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material considerations.
4. It is clear from its Officer's Report that the LPA did take into account the Retail Viability Assessment (RVA) submitted in response to the previous dismissed appeal. Whilst the LPA disagreed with the Appellant with respect to the type of viability evidence required to satisfy the relevant planning policies, it did undertake a critical analysis of that evidence. Although I have not agreed with the conclusions reached by the LPA on these matters, my divergence from the LPA's approach is in part due to events which transpired after the application was determined, including the unauthorised subdivision and change of use of the site, as well as the installation of a new tenant in the retail unit. As such, some of the Appellant's evidence was provided at a relatively late stage.
5. Although I have disagreed with the LPA's overall assessment, I do not find its behaviour in reaching a different conclusion to be unreasonable. The planning history of the site, combined with the limited evidence before the LPA of future

viability of the unit and different policy landscape at the time it made its decision contribute to these different outcomes. The LPA made a considered decision based on the information available to it at the time and did not prevent development which should clearly have been permitted, in that particular context.

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

Kim Langford Tejrar

INSPECTOR