



Costs Decision

Site visit made on 22 June 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2021

Costs application in relation to Appeal Ref: APP/T5150/W/20/3264503 112 Herbert Gardens, London NW10 3BP

- 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 Premji Varsani for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
-

Decision

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

Background

2. The applicant applied for planning permission¹ in August 2019 for the conversion of the existing dwelling into two flats. The Council failed to determine the application and the applicant made an appeal² under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
3. The appeal was allowed in August 2020 and planning permission was granted for the proposed development, subject to two conditions. Condition No 1 requires the development to be carried out in accordance with the approved plans. Condition No 2 has two parts and requires the applicant to submit details of the vehicular access (condition No (2)(i)) and details of secure cycle storage (condition No (2)(ii)) to the local planning authority for their approval.
4. Following the grant of planning permission, the applicant submitted details pursuant to condition No (2)(i) and condition No (2)(ii) to the Council for their approval. The Council approved the details submitted pursuant to condition No (2)(ii)³. However, the Council refused approval⁴ of the details submitted pursuant to the requirements of condition No (2)(i). The Council's refusal of the submitted details formed the basis of the latest appeal.

¹ Council Ref: 19/2870

² Appeal Ref: APP/T5150/W/20/3248161

³ Council Ref: 20/2881

⁴ Council Ref: 20/2878

Reasons

5. The Planning Practice Guidance (the 'PPG') advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
6. It will be seen from my decision on the appeal that I disagree with the Council and their assessment of the proposal. Whilst I have not agreed with the Council's views about the proposed development, that in itself does not mean that the Council acted unreasonably.
7. Paragraph 49⁵ of the PPG explains 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, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. An example of this includes persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
8. One of the main issues considered by the Inspector in respect of the previous appeal was whether or not the proposed access, parking and cycle storage arrangements would be acceptable including with particular regard to pedestrian safety and the character and appearance of the area.
9. In determining the appeal, the Inspector set out the following findings in her decision letter, which I consider to be pertinent to this costs application:

Paragraph 12 – "Forward of the appeal building, the site comprises hardstanding which it is proposed would provide 1 space for each dwelling. The Council suggest that this would comply with relevant parking standards, but that the Local Highway Authority would be unlikely to approve widening of the crossover to provide access to these spaces. This is because the Domestic Vehicle Footway Crossover Policy 2013 advises that the total width of crossovers should not normally exceed 50% of the total frontage to retain on-street parking and maintain the safety of pedestrians".

Paragraph 13 – "The submitted plans do not show alterations to the crossover, but given that the parking would serve separate dwellings, this would seem necessary to avoid vehicles mounting the kerb or crossing the footway. However, I consider that the submission of a detailed scheme for this provision could be the subject of a condition should the appeal be allowed."

Paragraph 14 – "The site is within a controlled parking zone, with parking to the front of the site restricted between 0800 and 1830 Mondays to Saturdays. The Council also advise that Herbert Gardens is not heavily parked at night. In this context, I see no reason that widening of the access to the site would be detrimental to the availability of on-street parking. Given also the depth of the site frontage and its position on Herbert Gardens which is subject to traffic calming measures, I am also satisfied that pedestrian safety would be safeguarded and widening of the crossover would be unlikely to have a negative impact on highway safety or other forms of movement. I further saw

⁵ PPG Ref: Paragraph: 049 - Reference ID: 16-049-20140306 - Revision date: 06 03 2014

that many sites nearby, including 114 Herbert Gardens, similarly have fairly wide crossovers."

Paragraph 16 – "The development does not provide 50% soft landscaping to the front garden or a front boundary wall. Be that as it may, the frontage is currently wholly hardsurfaced and used for parking with 2 vehicles parked at the time of my visit and it has no front boundary wall. Soft landscaping to most neighbouring properties is similarly very limited, and few have front boundary walls. In this context, the development would not appear unsympathetic or out of keeping. Moreover, the proposal includes new soft landscaping which the appellant suggests would be around 30% of the frontage area. This would be a significant uplift from the existing situation, and I find that the development would enhance both the character and appearance of the site and space available for drainage within the site overall. This is a material consideration which outweighs the guidance within the SPD..."

10. Having regard to her findings, the Inspector concluded *"For these reasons, I conclude on this main issue that access, parking and cycle storage would be acceptable to serve the development. Accordingly, I find no conflict with Policies DMP1 or DMP12 of the DMP which together seek satisfactory access and parking which does not negatively impact on existing parking, highways, other forms of movement or the environment"* (Paragraph 18).
11. Despite this, when assessing the details submitted pursuant to condition No (2)(i), the Council refused the application. To this regard, the reason for refusal on the Council's decision notice states:

"The information submitted pursuant to condition 2i (Details of vehicular access) to the proposed front garden layout would appear overly prominent and contribute to the detriment of the character and appearance of the surrounding streetscene and not be acceptable in terms of highway and pedestrian safety. Due to the proposed crossover width, its positioning in the centre of the site, lack of boundary treatment and the amount of soft landscaping proposed. The proposal is therefore contrary to policies SPD2, DMP1 and DMP12 of Brent's Development Management Policies. As such, the condition cannot be discharged on this basis."
12. In assessing the proposal, the Council consulted with the Local Highway Authority (the 'LHA') who advised that the proposed layout would not accord with Brent's Domestic Vehicle Footway Crossover Policy in terms of the required crossover width, its position in the centre of the site or the amount of soft landscaping proposed.
13. To this regard, the Council officer's report states *"Mindful of the Planning Inspector's decision to allow the appeal, the submitted details of the access arrangements have been forwarded to the Highways & Infrastructure Service for consideration. However, they have confirmed that they will not approve access arrangements shown over the Herbert Gardens footway and as the Local Highway Authority, they are not bound by the Planning Inspector's decision"*.
14. Moreover, written correspondence⁶ provided by the LHA in respect of the appeal argues that *"the submitted proposals for access are not deliverable in*

⁶ LPA Statement: Appendix 9 - Letter from John Fletcher, Transportation dated 18 January 2021

practice, as the proposed new crossover to Herbert Gardens would require the consent of the Local Highway Authority, who have confirmed that permission would not be granted for a crossover in the form submitted”.

15. The LHA’s position and the Council’s subsequent decision to refuse consent for the submitted details is wholly unreasonable as both parties have continued to raise objections to elements of a scheme which an Inspector has previously indicated to be acceptable.
16. In this instance, the applicant’s application to the Council to approve the details submitted pursuant to condition No (2)(i) followed an Inspector’s decision to grant planning permission to convert the property into two flats. In determining the appeal, despite identifying conflict with the Council’s Domestic Vehicle Footway Crossover Policy, the Inspector made it unequivocally clear in her decision letter that widening the existing crossover to accommodate off-street parking for two vehicles would be acceptable with regards to highway and pedestrian safety and the effect upon the character and appearance of the area. Moreover, she found that the provision of soft landscaping to the front of the appeal property would enhance both the character and appearance of the site.
17. Whilst I recognise that precise details about the width of the proposed crossover were not available to the previous Inspector when she made her decision, it is clear from her reasoning that widening the crossover to allow for ingress/egress for two vehicles would be acceptable on highway safety grounds. Consequently, I consider the Council’s decision to refuse permission wholly irrational because they failed to have proper regard to factors that ought to have been taken into account.
18. I note that the Council would support widening the existing crossover to 3.75m. However, the appellant explains that this width would be insufficient to serve two vehicles. Based on the evidence before me, I agree with the appellant’s position on this matter.
19. To this regard, I note that the Courts⁷ have found that it is unreasonable for the LHA, whose road safety objections were properly considered and rejected on appeal by the previous Inspector in favour of the appellant’s position, to maintain its own original view in respect of a later application. Therefore, it follows, that a refusal by the LHA to enter into an agreement for highway works after planning permission for a proposal had been granted by an Inspector is *Wednesbury*⁸ unreasonable and to permit such refusal would frustrate the planning process.
20. Turning to the issue of unnecessary or wasted expense, the Council’s persistence in objections to elements of a scheme which an Inspector has previously indicated to be acceptable constitutes unreasonable behaviour. As such, the Council’s actions have meant that the appellant has incurred unnecessary expense in preparing their appeal documents and an award of costs is justified.

⁷ See: R v. WARWICKSHIRE COUNTY COUNCIL EX PARTE POWERGEN PLC [1997] EWCA Civ 2280

⁸ See: ASSOCIATED PROVINCIAL PICTURE HOUSES v. WEDNESBURY CORPORATION [1948] 1 KB 223.

Other Matters

21. The applicant has raised other concerns relating to the manner in which the Council handled the application, which include an alleged failure by the Council to work proactively with the applicant. Given my findings above, it is not necessary to consider such matters in detail, as such considerations would not alter my overall conclusion.

Costs Order

22. 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 Brent shall pay to Mr Premji Varsani the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The applicant is now invited to submit to the Council of the London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Christopher Miell

INSPECTOR