



Costs Decision

Hearing Held on 28 September 2021

Site visit made on 28 September 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19/10/2021

Costs application in relation to Appeal Ref: APP/T2215/W/20/3248157 46 Lowfield Street, Dartford, DA1 1HU

- 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 Segun Kingsley for a full award of costs against Dartford Borough Council.
 - The appeal was against the refusal of planning permission for Change of Use of first floor from night club (including use of existing vacant part) to Use Class D1 (place of worship with ancillary offices and various ancillary community centre uses) for a temporary period until 10th July 2023 plus demolition of existing steel framed structure to provide additional parking (resubmission of DA/17/01929/COU).
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Decision

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

The submissions for Mr Segun Kingsley

2. Concern is expressed over the Council's timing of publication of technical consultee responses and delays placing responses online. It is considered that the applicants should have had an opportunity to respond to consultee comments. If the applicant had had sight of the comments earlier then there would have been more time to instruct consultants and present a better case to planning committee. Had this opportunity been made available the outcome of the planning application may have been different and an appeal avoided.
3. It is contended that consultation responses relating to a planning application for phases 2 and 3, which included representation from the Environment Agency, were not uploaded in a timely fashion. It is suggested also that there was a difference in the Council's reporting to its Planning Committee of consultation responses in respect of that planning application relating to phases 2 and 3 and that of this appealed proposal. Both cases were presented at the same committee meeting. The applicant also contends that the Environment Agency's technical response relating to the adjacent redevelopment site were not accurately reported at the planning committee meeting.
4. The Council claimed that circumstances had changed 8 weeks after the previous Inspector's appeal decision had been issued yet no planning permissions have been granted for the adjacent redevelopment site during that period. It is suggested that the Council is persisting to object to this appeal proposal on the same ground as was lost previously.

5. The Council has incorrectly implied that the Lowfield Street redevelopment is coming forward at a faster rate than the previous Inspector would have been aware of. But this has not been demonstrated by means of a phasing and delivery plan or other evidence. It is suggested that the Council's evidence is vague and generalised on this point. Rather it is suggested that the Council has overestimated the pace of development, rather than the previous Inspector underestimating it. The granting of planning permission at the adjacent site does not guarantee delivery, especially when pre-commencement or pre-occupation conditions require discharge.
6. It is also suggested that the adjoining developer is not complying with conditions and thus rendering that development unlawful yet the Council is allowing development to continue.
7. Similarly, with regard to housing delivery delay, the phase 2 town centre highway improvements have slipped. Furthermore, when the previous Inspector made her decision, she would have been aware that those works were planned for February 2020. The local planning authority has not had regard to this. The Council still contest this point having lost on this ground previously.
8. The applicant considers that no evidence exists to justify departing from the previous allowed appeal decision. The proposal seeks the same expiry date for the temporary use which is said to be the same date as the house in multiple occupation (HMO) granted planning permission by the local planning authority for 46- 58 Lowfield Street adjacent the appeal site.
9. The local planning authority has relied on an unreasonable interpretation of the highway authority's comments and has also relied on comments relating to the previous appeal to justify their objections to the existing vehicular access, which also provides access for the HMO at 46- 58 Lowfield Street.
10. The Council has advanced objection to the proposal on noise grounds yet the redevelopment that is being built out has unresolved noise issues arising from uses at Central Park which impact the occupiers of apartments fronting the park.
11. The reason for refusal provided on the Council's decision notices references a conflict with the Parking Standards Supplementary Planning Document (SPD) yet this is not discussed within the Council's evidence, therefore the extent of conflict has not been set out.
12. It is suggested that the proposal has been resisted by the Council in an effort to keep the value of the site low for potential Council compulsory purchase order (CPO) purposes that is being advanced in partnership with Bellway Homes.
13. Occupation of the building and 46 – 58 Lowfield Street have brought about an uplift in the appearance of these buildings.
14. The Council's claim that the proposed temporary use will prevent the regeneration of this site is contested.
15. For these reasons the applicant considers that the Council has acted unreasonably and the applicant has incurred the unnecessary time and associated cost of the appeal process.

The response by Dartford Borough Council

16. The Council considers the timing of uploading consultee comments to the Council's website is not relevant to the appeal and comments that it focused on determining the planning application in a timely manner. It is advised that the Environmental Health comments were not deliberately withheld. It was considered that allowing the applicant time to comment on technical responses was unnecessarily onerous given the reasons for recommending refusal related to matters of principle. The applicant has not been prejudiced as there was opportunity to raise concerns with the decision maker at the committee meeting.
17. The Council considers that the previous Inspector did not take evidence with regard to timing of development into account. Work had started on the adjacent site at the time the planning application that is the subject of this appeal was submitted to the local planning authority. In addition, it is considered that the comments relating to Phases 2 and 3 are not relevant to the proposal and therefore should have no bearing on this costs application.
18. Information on housing delivery has been gained by the Council directly from Bellway Homes. It is advised that housebuilders do not generally share details of their phasing plan but Bellway has kept the Council regularly updated on housing delivery, noting that delivery has been delayed due to the pandemic. The condition relating to phasing evidence does not require calendar date timelines. For clarity, the Council has confirmed that it is not claiming that the rate of housing delivery within the east of Lowfield Street regeneration area has increased relative to that which was predicted at the time of the previous appeal. However, there was a clear change as work had started on site when the application that is the subject of this appeal was submitted to the Council. This is said to constitute a material change in circumstances and, in view of this, enabled the Council to opine that the regeneration of the town centre was advancing at a faster pace than was anticipated by the previous Inspector. It is appropriate for the Council to take into consideration updated predictions of timescale in reaching its decision.
19. The Council considers that conditions relating to an unrelated planning permission are not relevant to this costs claim.
20. With regard to the phase 2 highway improvements the Council clarifies that this scheme has advanced relative to the position at the time of the previous Inspector's decision.
21. The Council contends that it has set out in its appeal statement reasons why it considers that the position has changed since the previous Inspector made her decision and considers it has interpreted the highway authority's comments reasonably.
22. The Council had accepted the previous Inspector's approach with regard to noise impact. It is considered that appropriate noise mitigation can be achieved relating to the adjacent development.
23. With regard to the reference to the parking standards SPD, accesses are a matter discussed within that SPD, and this is the reason that it has been referenced within the Council's decision notice.

24. The Council strongly deny the applicant's claim in respect of the CPO and clarifies that the purpose of commenting upon the CPO related to the potential value of the site to the applicant.
25. The Council notes that the front elevation of the building has been painted, however other elevations of the building present a very poor appearance, and these would be visible to occupiers and in public views when the adjacent development comes forward.
26. The Council contend that its approach to this planning application has not prevented the bringing forward the redevelopment of the site and points out that a pre-application meeting to discuss the long-term plan for the site has taken place. The applicant would have been aware of the long-term objectives relating to the site when purchasing the property.
27. The Council considers it has clearly set out the reasons for refusing planning permission in accordance with the development plan and having had regard to the previous Inspector's decision.

Reasons

28. The applicant's contentions pertain to delays in obtaining technical responses and/or posting them on the Council's website in a timely manner. There is also concern expressed to potential differences in the Council's considering and/or reporting of planning applications to its planning committee. On the evidence before me there is no clear indication that the Council would have come to a different decision, even if the applicant obtained technical responses sooner and was in a position to appoint a consultant to assist his case. However, on these points, the applicant's contentions relate to the Council's conduct during the course of its consideration of the planning application, rather than failure to adhere to the timetable of the appeals process. These are matters that should be taken up with the Council.
29. There is clearly a difference in opinion between parties as to the speed that the Lowfield Street redevelopment is coming forward and the implications of the proposal to the regeneration objectives of the area. Although planning permissions for development may not have been issued between the period of the previous appeal decision and the appellant's submission of their planning application, it was clear that work was advancing at the adjoining site. Nonetheless, this is a matter of debate that pertains to the appeal, rather than this costs decision.
30. The Council has clearly set out what it considers to be changes in circumstances since the Inspector reached the previous decision, having had regard to the buildout of the development at the adjacent site. Despite the proposal being the same as that considered by the previous Inspector, with a similar expiry date for the temporary use, I am satisfied that the Council has set out its justification for refusing this most recent proposal. The fact that I have arrived at a contrary view does not, of itself, show that the Council has behaved unreasonably.
31. I consider the matter of compliance with conditions at the adjacent development site to be a separate matter and unrelated to this costs claim.
32. It is open for the Council to interpret the highway authority's comments in the way that it has and take into regard other technical evidence available. With

regard to noise, the Council has considered relevant matters and has explained that the noise concerns highlighted by the applicant relating to the adjoining development can be addressed. Again, the fact that I have arrived at a contrary view in respect of both these issues, does not, of itself, show that the Council has behaved unreasonably.

33. I am satisfied that the Council has adequately explained the reason for referring to the Parking Standards SPD within its reason for refusal, as well as its reference to CPO.
34. I acknowledge that occupation of 46 – 58 Lowfield Street and the painting of the front elevation of the appeal building may have brought about some uplift in the appearance of these buildings. Again, these matters pertain to the appeal, rather than this costs application.
35. 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. I do not consider that any of the matters raised and discussed above would have obviated an appeal in this case.

Conclusion

36. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs is not justified.

Nicola Davies

INSPECTOR