

Costs Decision

Site visit made on 8 November 2021

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th November 2021

Costs application in relation to Appeal Ref: APP/Q5300/W/21/3274143 Rear of 3-7 Seaforth Gardens and 35 Broad Walk, London, N21 3BT

- 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 Harry Pantelides (Megalux Ltd) for a full award of costs against London Borough of Enfield.
 - The appeal was against the refusal of planning permission for development described as "Development of the site for 3 detached dwelling houses, incorporating soft and hard landscaping and installation of boundary fencing."
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Decision

1. The application for an award of costs against the London Borough of Enfield is allowed in part in the terms set out below.

Reasons

2. National Planning Practice Guidance (the PPG) states that costs may be awarded where a party to an appeal has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour on the part of a local planning authority may include delaying in providing information or any other failure to adhere to deadlines, or a failure to produce evidence to substantiate each reason for refusal on appeal.
3. The applicant contends that the Council have behaved unreasonably in not submitting evidence in support of their case and not submitting conditions for the Inspector's consideration if the appeal were to be allowed.
4. The Council chose not to submit an appeal statement, relying instead on its officer's report. The Council is not required to submit a separate appeal statement if it feels that its officer's report addresses the applicant's grounds of appeal. While the Council did not expressly state that it was relying on the report alone, the report was submitted by the Council and sets out its justification for refusing permission.
5. The Council also contends that the daylight and sunlight report, transport technical note and tree survey submitted with the appeal should have been provided at application stage. However, it is expected that an appellant's grounds of appeal will respond to the Council's reasons for refusal. This may include provision of supporting information where a reason for refusal was not anticipated, or the information submitted with an application is insufficient to satisfy the Council's concerns. The additional information provided with this appeal did not seek to alter the proposed development, rather responding to

the Council's reasons for refusal. The Council was able to respond to this information if it chose to do so.

6. In determining the appeal, I found that three of the Council's reasons for refusal were adequately addressed by the evidence submitted. However, the reason for refusal relating to the impact on trees relied in part on submissions made by the Council's tree officer. That consultation response was not submitted by the Council, nor was any further evidence submitted in support of this reason at appeal stage. It is not uncommon for development to be carried out while protecting trees in the vicinity of the development site, subject to protective measures which can be required by appropriately worded conditions. It is not therefore clear from the information submitted why the Council felt it necessary to refuse permission on this issue.
7. Similarly, the Council has not substantiated its reason for refusal that the development would result in overshadowing and restricted outlook for future occupiers. I saw no evidence that the trees around the site would result in an unacceptable outlook from the houses, and the Council has not responded to the daylight and sunlight assessment submitted with the appeal which concludes that natural light levels to each habitable room would be acceptable.
8. The Council's suggested conditions were received after the date for final comments, although the Council contends that they were submitted earlier. It is the Council's responsibility to ensure that they provide any submissions that they wish to be considered in accordance with the procedural timetable. I note that the absence of conditions was drawn to their attention before my site visit, and they were provided two weeks after that date. The Council's behaviour was therefore unreasonable, although in this instance it is not clear that it has caused the appellant unnecessary or wasted expense.

Conclusion

9. I therefore find that the Council has demonstrated unreasonable behaviour in relation to two of the reasons for refusal that has resulted in unnecessary or wasted expense on the part of the applicant.

Costs Order

10. 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 London Borough of Enfield shall pay to Mr Harry Pantelides (Megalux Ltd) the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's reasons for refusal relating to the impact on trees and the living conditions of future occupiers respectively.
11. The Applicant is now invited to submit to the London Borough of Enfield, who have also been sent a copy of this decision, details of those costs with a view to reaching agreement as to the amount. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

M Chalk

INSPECTOR