



Costs Decision

Site visit made on 10 November 2021

by C J Leigh BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2021

Costs application in relation to Appeal Ref: APP/D5120/W/21/3271790 104 Lion Road, Bexleyheath, DA6 8PQ

- 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 was made by Mr Berridge, Marbleacre Designer Homes Ltd for a full award of costs against the Council of the London Borough of Bexley.
 - The appeal was against the refusal of planning permission for the subdivision of 104 Lion Road into 4 apartments, together with a new build block of a further 6 apartments on the land to the rear, with associated access, parking and refuse storage.
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Decision

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

Reasons

2. The Planning Practice Guidance: Appeals (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. The application for costs is made on a procedural and substantive basis. It is stated that the Council's did not take proper account an extant permission for conversion of 104 Lion Road into flats or have proper regard to pre-application discussions. It is further said the Council did not provide sufficient explanation to support their refusal that there would be harm to locally listed buildings and to living conditions, with the absence of an Appeal Statement from the Council given as support for this submission.
 4. The PPG states (paragraph 049) that a possible ground for unreasonable behaviour may be where a local planning authority makes is vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. A further ground is the failure to grant planning permission for a scheme the subject of an extant permission where there has been no material change in circumstances.
 5. In this instance the Council's Delegated Report was clear in identifying the harm arising from the proposed development. I found no difficulty in identifying the passages in the Report that set out why the Council considered the setting of the locally listed building would be harmed; I cannot agree it was silent on this matter. Similarly, the Report explained why the Council considered harm to living conditions, with reference to development plan policies; again, I cannot
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see it was silent on the matter. The Council paid regard to the extant permission for the conversion of No. 104. The absence of an Appeal Statement by the Council – even if they had previously said they intended to submit one – did not make their position any less clear.

6. My assessment of the case came to different conclusions on some matters, but that does not make the Council's submissions vague, generalised or inaccurate. It is clear to me in this case that the effect of the proposed development is a matter of judgement, and the Council's submissions (and those of some third parties) were legitimate and well-expressed. The Council had provided guidance in the pre-application discussions and it was clear to me from the Delegated Report that they found the subsequent formal application did not represent a scheme that addressed all they required to see in order to allow them to grant permission.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

C J Leigh

INSPECTOR