



Costs Decision

Site visit made on 5 January 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st January 2022

Costs application in relation to:

Appeal A Ref: APP/Q5300/W/21/3277396

Appeal B Ref: APP/Q5300/X/21/3277394

219 Whittington Road, Southgate N22 8YW

- The application is made under the Town and Country Planning Act 1990, sections 78, 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Benny Hoffman, Silver Assets Ltd for a full award of costs against the Council of the London Borough of Enfield.
 - Appeal A was against the refusal to grant prior approval required under Article 3(1) and Schedule 2 [Part 3, Class M, paragraph M.2] of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use from Class A2 to residential use (Class C3).
 - Appeal B was against the refusal of a certificate of lawful use or development for is change of use from the ground floor retail use (A1)/professional services (Class A2) to residential use (Class C3).
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that 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.
3. The applicant's submission is based on three points, drawn from examples given in the Guidance. Firstly, that the Council has prevented or delayed development which should clearly be permitted. Secondly that no evidence has been produced to substantiate the reasons for refusal. And thirdly, that the assertions made in relation to the proposal's impact are vague, inaccurate and unsupported by any objective analysis.
4. The Council indicates that it robustly justified its reasons for refusal within its delegated officer reports. In respect of Appeal B, the officer report solely focussed on the issue of whether the prior approval subject of Appeal A was determined within the 56 day time period. Whilst I have found in my decision that the Council did not determine it within the 56 day period, the officer report evidences why it believes it did so. Although it's approach in setting the start date for the prior approval was flawed having regard to the relevant case law¹, I nevertheless consider that the Council provided sufficient evidence to

¹ *Murrell v SSCLG* [2010] EWCA Civ 1367

substantiate its approach. Moreover, had the Council been correct, then the development would not have benefited from the permitted development right under Class M and it would have been correct in refusing the LDC application.

5. In respect of Appeal A, the Council's officer report sets out clearly that it had concerns regarding the development in line with the provisions of condition M.2(1) of Class M of Part 3 of Schedule 2 of the GPDO. Whilst the Inspector on appeal in respect of the first prior approval came to an alternative view, I am satisfied the Council nevertheless substantiated within the report its reasons for refusing the application for prior approval subject of Appeal A. Again, its misapplication of the statutory provisions in the GPDO is not sufficient for me to conclude that unreasonable behaviour has taken place.

Conclusion

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

J Whitfield

INSPECTOR