



Costs Decision

Hearing held on 22 and 23 March 2022

Site visit made on 23 March 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 April 2022

Costs application in relation to Appeal Ref: APP/T5150/W/21/3272201 96 High Road, London NW10 2PP

- 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 Gargreen Limited for a partial award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of planning permission for 'part demolition of existing buildings and retention of the original police station building comprising flexible commercial space (Class A1, D1, B1a, B1b, B1c) and redevelopment of the site to provide 28 residential units within a building extending up to 4 storeys together with private and communal space, waste/cycle storage, associated landscaping and public realm (amended scheme)'.
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Decision

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

The submissions for Gargreen Limited

2. In summary, the Council behaved unreasonably in refusing permission contrary to the recommendation to the Planning Committee to approve the application. Costs should be awarded for consultants' time spent at the hearing defending reasons for refusal which should not have been included on the decision notice.
3. In relation to its second reason for refusal, the Council failed to provide compelling evidence of any negative impacts of the proposal on the street scene or surrounding area, and it put forward no actual objection to the height of the development. In suggesting that there would not be harm to heritage assets, its case was also contradictory.
4. The Council did not justify the third reason for refusal. It changed its position during the Hearing, accepting that outlook for occupiers of 100 High Road and the living conditions of occupiers of 8 Huddlestone Road would not be harmed. It presented no evidence to dispute the conclusions of the Daylight and Sunlight Report March 2021 (DSR), nor did it sufficiently identify any specific harm that would be caused to occupiers of 6 Huddlestone Road.
5. The Council agreed that conflict with the policies of the development plan cited within its fourth reason for refusal would be addressed by the amended layout plan submitted as part of the appeal. If the Council had accepted the plan earlier, it would not have been necessary to debate this matter.
6. There being no justification for the second, third or fourth reasons for refusal, there should have been no need for a Hearing in this case. The first reason for

refusal concerning external amenity space provision was the only matter on which there was scope for debate on compliance with the development plan, but as an allocated site with no symptoms of overdevelopment and no objection from statutory consultees, design or heritage officers, the application should have been approved. Although not given as a reason, it was the lack of on-site affordable housing provision that led the Committee to refuse the application, a long period after the application had been submitted.

The response by the Council

7. In summary, the Planning Committee was presented with a proposal that was contrary to a number of policies of the development plan applicable at that time. Affordable housing was not a reason for refusal.
8. The applicant has not addressed the first reason for refusal. The Council's concerns on the second reason for refusal relate to the scale and mass of the building and lack of separation to Huddlestone Road dwellings. These were reasonable concerns which could have been alleviated by a reduction in the number of dwellings. Support in the development plan for optimising the capacity of sites should not be at the expense of other policy requirements.
9. Furthermore, the Committee could only determine the application on the basis of the information that was available. The amended layout showing an additional three-bedroom dwelling was not before the Committee at the time of its decision. Nor was the updated DSR. The assessment of living conditions for occupiers of 100 High Road needs to be based on the current condition of the site, and the depth of dining/kitchen rooms means that there would be harm as a result of the development close to windows. The cumulative impacts of the development would further cause harm to living conditions for occupiers of 6 Huddlestone Road.
10. There is policy justification for the reasons given for refusal, and disagreement with those reasons is not evidence of unreasonable behaviour. Moreover, the appellant requested the appeal be determined by way of a Hearing.

Reasons

11. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour include failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
12. I appreciate that the site is allocated for development, but any proposal must be considered having regard to the specific merits of the development that is proposed. In this case, the applicant engaged proactively with Council officers on the proposals for the site over some time. The officer recommendation to the Planning Committee was that planning permission should be granted, and I note

that there were no objections from statutory consultees to the proposal. However, the Committee was entitled to exercise planning judgement to reach a different conclusion on the merits of the proposal, albeit that there should be sufficient evidence to properly substantiate its decision.

13. I share the applicant's view that there is a contradiction in the harm alleged by the Council to the character and appearance of the area as part of its second reason for refusal and the failure to identify harm to heritage assets. I consider this to significantly weaken the Council's arguments on this matter. Even so, I am not persuaded that it means the reason for refusal was wholly unfounded or without substance.
14. The effect of a proposal on the character and appearance of an area depends on an overall assessment taking into account a range of factors. The Council accepted at the Hearing that the development would not be higher than the Willesden Green Baptist Church or St Andrew's Church, but the proposal would undoubtedly result in a fairly large building, and I do not consider that it was necessarily unreasonable for the Council to raise concerns about the overall scale of the development in the context of its surroundings. In addition, the proposal would result in the loss of separation to dwellings on Huddlestone Road, and while I have not found that this would be unacceptable, this reflects a matter of planning judgement. I have ultimately reached a different conclusion to the Council and found that there would not be harm to the character and appearance of the area, but it is not inherently untenable or unreasonable for the Council to have taken a different view. In my assessment, the Council produced sufficient evidence to substantiate its objections to the proposal despite the fact that it did not identify harm to heritage assets, and I am not persuaded that it has behaved unreasonably in relation to the second reason for refusal.
15. The Council's third reason for refusal concerned the effect of the proposal on neighbouring occupiers. My Appeal Decision makes clear that I agree with the Council that there would be unacceptable harm to outlook and privacy for occupiers of 6 Huddlestone Road, and I find that the Council adequately substantiated this element of the reason for refusal. Although my concerns in these regards do not extend to the occupiers of 8 Huddlestone Road, the applicant's evidence on these matters makes little distinction between effects on Nos 6 and 8. Even if I were to find that the Council had behaved unreasonably in alleging harm to the occupiers of No 8 through loss of outlook and privacy, it is not therefore clear that this would have directly caused unnecessary or wasted expense in the appeal process.
16. I have found that the proposal would not cause unacceptable overshadowing or light loss to Nos 6 or 8. Nevertheless, the applicant's DSR does show that there would be some loss of light to these properties. While the Council did not challenge the findings of the DSR that relevant guideline standards in relation to light for Nos 6 and 8 would still be met, I do not consider that it was unreasonable for it to take the loss of light into account alongside outlook as part of its overall assessment of the effect of the proposal on the living conditions of the occupiers of these dwellings.
17. Furthermore, whether there would be a perceived loss of privacy and the effect of this on neighbouring living conditions is a matter of planning judgement. Although I am satisfied that screening to balconies could prevent unacceptable overlooking

to occupiers at 100 High Road, it was not unreasonable for the Council to have concerns that there would be a perceived loss of privacy.

18. However, the Council accepted at the Hearing that windows to the side of 100 High Road were in fact secondary windows to the flats here, and it did not maintain objections in relation to outlook, or light for the bedroom to the first-floor flat. The Council suggested that there would be harmful loss of light to the kitchen/dining/living rooms, but presented no firm evidence to counter the analysis within the applicant's DSR demonstrating that levels of light would be acceptable, irrespective of the depth of the affected spaces. Its suggestion therefore seems to me to be little more than an unsupported assertion.
19. Given these factors, I do not consider that the Council's claim that there would be harm to the living conditions of occupiers at No 100 through loss of light and outlook was well-founded, and I find that it has behaved unreasonably in failing to provide sufficient evidence to substantiate this part of its case. I have found in favour of the applicant on the planning merits of this particular point as set out within my Appeal Decision, and it follows that the applicant has been put to unnecessary expense in pursuing this matter at appeal.
20. That said, I remain satisfied for the reasons above that the third reason for refusal was largely legitimate, and for the avoidance of doubt, I confirm that the unreasonable behaviour and unnecessary expense relate only to matters of light and outlook for occupiers at 100 High Road.
21. Turning to the Council's fourth reason for refusal, the proposal that was before the Committee to consider did not provide the housing mix sought by the Core Strategy 2020 and Policy BH6 of the then emerging Brent Local Plan, and the Council was entitled to find conflict with these policies.
22. I acknowledge the comment within the Statement of Common Ground that the Council agreed that amended plans submitted with the appeal could form part of the appeal if I were to allow them. Be that as it may, my acceptance of the amended plans was not a foregone conclusion. The amended plans included a revised ground floor plan which altered the housing mix, and the Council confirmed at the Hearing that this would meet the terms of Policy BH6. However, it held that the dwelling would not meet requirements for amenity space, and that the amendment would further exacerbate the deficiency in amenity space which was the basis for the first reason for refusal. For the reasons set out in my Appeal Decision, I agree, and I have not found it appropriate to take the amended plan into account. In this context, I do not consider that it was unreasonable for the Council to maintain its objection to the mix of housing proposed.
23. I note that a significant period elapsed between the planning application being submitted and its consideration by the Planning Committee. Be that as it may, I have no firm reason to conclude that the delay was the result of unreasonable behaviour by the Council.
24. Drawing matters together then, I find that with the exception of elements of the third reason for refusal relating to light and outlook for occupiers at 100 High Road, the Council has provided adequate justification to substantiate its reasons for refusal. The appeal could not therefore have been avoided, and I find little support for the applicant's suggestion that the Hearing should not have been necessary. Notwithstanding the applicant's comments to the contrary, I further find no compelling evidence to suggest that the Committee's decision to refuse

permission was unduly influenced by the lack of proposed on-site affordable housing so as to amount to unreasonable behaviour.

25. Although I have disagreed with the Council's second reason for refusal and some other elements of its case, I have concluded in my Appeal Decision that the appeal should be dismissed. Accordingly and irrespective of the allocation of the site for development, it is not apparent that the development should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material considerations.
26. Nevertheless, I have found that the Council did not substantiate aspects of its case relating to concerns about light and outlook for occupiers at 100 High Road as part of its third reason for refusal, and the applicant has been put to unnecessary expense in pursuing this matter at appeal.
27. For the reasons above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

28. 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 Gargreen Limited the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with matters of light and outlook for occupiers at 100 High Road as part of the response to the Council's third reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
29. 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.

J Bowyer

INSPECTOR