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## Costs Decision

Site visit made on 23 June 2022

**by David Wallis BSc (HONS) PG DipEP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 July 2022**

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### **Costs application in relation to Appeal Ref: APP/Q5300/W/3291053 93 Burleigh Gardens, Southgate, London, N14 5AJ**

- 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 Palmers Green Investments Limited for a full award of costs against the Council of the London Borough of Enfield.
  - The appeal was against the refusal of planning permission for Change of use of existing building and part 3rd floor extension, fourth floor roof extension to provide an additional floor and rear four storey extension, enclosure of existing external staircase, to provide 107 bed hotel with associated external alterations, landscaping and car parking.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) 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 waste expense in the appeal process. It gives examples of unreasonable behaviour by local planning authorities including failure to co-operate, delay in providing information or other failure to adhere to deadlines.
3. The appellant has sought for a full award of costs on the basis of unnecessary delay at pre-application and application stage and appeal stage, lack of co-operation, provision of inaccurate information and failure to provide evidence including failure to sign a statement of common ground. The Council has rebutted these arguments citing dialogue had been ongoing throughout all planning processes, Covid-19 lockdown measures, that there was no need for the Council to comment on new material and that any inaccuracies did not cause an unnecessary expense.
4. I deal with each one of these allegations below.

#### *Delays at pre-application, application and appeal*

5. The appellant submits that there were delays in issuing pre-application responses in writing, delays in providing information and consultation responses during the application, and an overall delay in making a decision on the planning application.

6. Typically, costs relate to unreasonable behaviour and unnecessary expense occurring in relation the appeal process. This is supported by paragraph reference 16-033-20140306 of the PPG, which states that costs are not able to be claimed for the application period. I am however able to take into account actions prior to the appeal when considering the case for costs as a whole.
7. The evidence before me demonstrates that dialogue was being held even with the difficulties posed by the Covid-19 pandemic. The dialogue shows that the appellant had been given the opportunity to withdraw the application prior to its determination (appellant's enclosures 5 and 6). I am however concerned that the officer delegated report was unavailable for a long period after the decision was made, which potentially prejudiced the appellant's defence of the appeal even if the reasons for refusal were known. The failure to make the report available meant that the appellant was unable to understand the rationale behind the reasons for refusal. Whilst this could be construed as unreasonable behaviour it did not give rise to any unnecessary expense.
8. At appeal stage, the Council submitted the delegated report as the official statement of case. This in itself is not an unusual practice, though it is pertinent that additional information had been supplied to the appeal by the appellant that the Council did not comment on directly. It was only in the costs rebuttal statement that the Council confirmed that the heritage issues were in fact resolved. This delay in clarifying the position did not, in my view, cause any unnecessary expense in this instance because the change of position came about after receiving the appellant's additional information. It is normal that appellants would seek to reinforce their case at appeal with additional documentation and the expense in producing documents for this appeal was necessary in order to demonstrate to the Council that the heritage matters were satisfactory.
9. Even if the Council had officially withdrawn the heritage reason for refusal, this would have been a product of the submission of the further information. The information was therefore necessary to reach this position, so was not a wasted expense.
10. I conclude on this ground that there have been delays, and these delays have shown an essence of unreasonable behaviour. I do not however consider that the unreasonable behaviour has led to any wasted or unnecessary expense.

*Lack of cooperation and feedback*

11. My attention is drawn to a perceived failure of the Council to engage with the appellant during the application stage, and that the appellant sought to progress alternative schemes during the course of the appeal.
12. As covered in paragraph 7 of my decision above, there were difficulties with the Covid-19 pandemic that had to be overcome during the course of the application. However, from the evidence before me, it is regrettable that information was not made available sooner or disseminated to Councillors when requested. Nonetheless, the table provided in the appellant's costs claim demonstrates that, whilst responses from the Council were not immediate, dialogue was ongoing, and information was being released including prior to the determination of the application.

13. In respect of alternatives, I note recorded attempts to engage by the appellant to progress the scheme through another application. However, I do note from the appellant's costs claim that the majority of these attempts came after the planning appeal was lodged. Given that the Council has withdrawn its heritage concerns following receipt of the additional information from the appellant, I have optimism that the other issues could have been resolved through constructive dialogue. I therefore consider that the lack of engagement from the Council following submission of the appeal to be unreasonable behaviour. I do not however consider this has caused any wasted or unnecessary expense in the appeal process, given that the information for the appeal was necessary to challenge the Council's decision at the onset of the appeal.
14. The appellant refers to a lack of guidance on the Unilateral Undertaking (UU). I also sought to obtain a response from the Council on this matter, for which extensions of time were granted but no response received. Whilst comments on the UU were not forthcoming, the appellant did not incur any wasted or unnecessary expense in this instance because there was an implied need for the UU within the officer's report.

#### *Inaccurate information*

15. I note that efforts were made by the appellant to highlight errors in the appeal questionnaire to the Council, which were claimed by the Council to be administrative errors with no bearing on the appeal process.
16. The errors in the questionnaire are concerning, not least that the appeal site was marked as being within a Conservation Area. I do not consider that these could be disregarded as minor errors particularly when there are legislative provisions for Conservation Areas that may have been invoked. It is a failure of diligence for the questionnaire to be submitted as thus, although I am not convinced that this, in itself, results in unnecessary expense given the limited intervention of the appellant to point out the clarifications needed.
17. Whilst the Council's overall case regarding the impacts on the living conditions of neighbouring occupiers required proper consideration, the matter of 'privacy' was ambiguous. The matter of privacy, which receives several paragraphs of discussion in the officer report, concluded by stating a lack of privacy would not arise due to design and orientation of windows. The inclusion of privacy in the reason for refusal is therefore inaccurate and unsubstantiated, which the appellant highlighted in the appeal statement. The Council has not responded to this error or sought to clarify otherwise, which is unreasonable given the circumstances.
18. Given that the appellant needed to respond to the Council's overall case, and privacy formed a small component of this, I do not consider that any unnecessary or wasted expense has been incurred.
19. On this matter, I do find that inaccurate information has shown unreasonable behaviour on the part of the Council but that the remedy initiated on behalf of the appellant has not led to wasted or unnecessary expense.

#### *Lack of evidence*

20. The appellant has argued that the Council presented an unsubstantiated case to the appeal, amplified by only submitting the officer report to the appeal as opposed to formally responding to the appellant's full appeal statement.

21. Notwithstanding my views on the matter of 'privacy' above, which is an unsubstantiated issue of minor consequence, I consider that the Council was entitled to come to the decision it did on the basis of the information at the application stage. It was only through the appellant substantiating its own case was it demonstrated to the Council that the concerns were unfounded. This is not a fault of the Council in deciding to refuse the planning application, and the Council's position could only change following the necessary of expense of the appellant to prepare the necessary documentation.
22. I appreciate the appellant's efforts in submitting a statement of common ground (SoCG) to the appeal and that there is frustration that the Council did not agree to its terms. Whilst the Council was entitled to come to the decision it did on the basis of the application documents, the failure to acknowledge the contents of the SoCG is unreasonable behaviour, particularly since it would have confirmed the heritage reason for refusal could be withdrawn and that the matter of privacy was erroneous. However, having regard to paragraphs 9 and 19 above, the case for the appellant had already been necessarily made and therefore no further expense was incurred as a result of this unreasonable behaviour.

### **Conclusion**

23. The Council has behaved in way that I consider has elements of demonstrable unreasonable behaviour. However, my consideration is whether or not that behaviour has led to unnecessary or wasted expense for which costs can be claimed. For the reasons I have given above, I do not find that unnecessary or wasted expense, as described within the PPG, has been incurred as a result of the unreasonable behaviour.
24. The costs claim is therefore refused.

*David Wallis*

INSPECTOR