



Costs Decision

Site visit made on 1 August 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2022

Costs application in relation to Appeal Ref: APP/Q5300/W/21/3279277 323 Baker Street, Enfield EN1 3LF

- 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 Akiva Schreiber for a partial award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a change of use of retail use (Class A1) to residential use (Class C3).
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Decision

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

Preliminary Matters

2. The applicant's costs application was not identified on the appeal form but is referenced at paragraphs 21 and 39 of their appeal statement. I sought clarification from the applicant as to whether they were seeking a full or partial award of costs. The applicant confirmed that the application for costs concerned the first reason for refusal only and so a partial award was sought.
3. The Council did not initially respond to the application for costs. However, after I drew the application to its attention a response was submitted and copied to the applicant. I have had regard to it and to the applicant's response in determining this costs application.
4. In addition to this costs application, I have considered an application for costs on the same grounds at the next door property, No 321 Baker Street (Appeal Reference APP/Q5300/W/21/3279272).

Reasons

5. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that this unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
6. The cost application has two parts. Firstly, the applicant states that the Council has confused the requirements for assessing a prior approval with the requirements for assessing a planning application; and, secondly, that the Council's first reason for refusal is an unreasonable error in law.

7. With regards the first part of the application, the title on the Council's decision notice clearly references a refusal of prior approval. The Council's first reason for refusal, whilst erring in the wording of the title of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), clearly concerns a limitation of Class M of the GPDO that the Council considered would be breached if prior approval were to be granted. This matter would not be relevant to the determination of a planning application. No substantive evidence has been provided to support the applicant's position in this regard.
8. With regard to the second part of the application, it is not the role of the Inspector to determine errors in law, that is the function of the Courts. The applicant's position in relation to costs appears to be the same as their position in relation to the appeal itself. I did not find in the Council's favour with regard to the issue of commercial floorspace in my main decision and I do not intend to repeat my reasons here.
9. However, I note that the Transport Assessments (TAs) and the Marketing Report for the appeal proposal address 321 and 323 Baker Street together. I also note the applicant submitted a floorplan for a wholly different development proposal in their 2018 TA, which shows functional connections between both properties.
10. Furthermore, when I visited the site, I observed an existing doorway that would provide access from No 323 to the rear yard of No 321, and from there to the interior of No 321 via another existing doorway. The proposed plan for No 323 at appendix B of the 2021 TA also shows a physical connection between Nos 321 and 323, which is not shown on the proposed floorplans for No 321.
11. The applicant's position is that it would not be possible to implement both proposals at Nos 321 and 323 because this would breach the floorspace threshold under Schedule 2, Part 3, Class M, Paragraph M.1.(d) of the GPDO, but that this should not affect the individual prior approval determinations at each address. However, given the links between the two properties and the inconsistencies in the applicant's evidence, I am satisfied that the Council's position was not an unreasonable one to have reached.
12. The applicant's evidence includes a Counsel opinion, and I note the comments from Counsel at paragraphs 11-13 regarding the wording of the GPDO and the Council's position as to the existing building in this case.
13. I also note the comments and caselaw references from Counsel at paragraphs 19 and 20 concerning the approach to dealing with multiple applications. However, I am not familiar with this caselaw, which is not in the evidence before me, and I note it does not concern prior approvals.
14. For both parts of the application and with reference to PPG, I am not satisfied that the applicant has shown that the Council's behaviour was unreasonable so as to be grounds for an award of costs.
15. For these reasons I conclude that an award of costs is not justified.

A Parkin

INSPECTOR