



Costs Decision

Site visit made on 11 April 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2022

Costs application in relation to Appeal Ref: APP/C5690/W/21/3283771 Anayah Apartments, Trundleys Road, London SE8 5FB

- 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 Mr Imran Patel of IFBAA Investments Ltd for a [partial] [full] award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against the refusal of the Council to grant prior approval for a development described as "the construction of 2 additional storeys to 54B Trundley's Road, SE8 to provide 4 x 2-bed and 1 x 3 bed flats to a height no more than 18 metres high, together with an additional 10 cycle spaces under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) – Schedule 2, Part 20, Class A".
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Decision

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

Reasons

2. The Planning Practice Guidance ("the 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. The applicant is seeking an award of costs against the local planning authority on both procedural and substantive grounds.
3. Examples of unreasonable behaviour are set out in Paragraph 047 of the PPG¹ in respect of procedural awards, and include a "lack of co-operation with the other party or parties", "delay in providing information or other failure to adhere to deadlines", and "only supplying relevant information at appeal when it was previously requested, but not provided, at application stage". Paragraph 049 of the PPG² sets out examples of unreasonable behaviour in respect of substantive awards, including "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", and making "vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis".
4. In fact, the applicant's claim in this case essentially stems from a single matter. The Council refused to grant prior approval for the proposed development on the basis of its impact of the external appearance of the host building. In

¹ Reference ID: 16-047-20140306

² Reference ID: 16-049-20140306

reaching this conclusion it took into account, among other things, the height of the enlarged building and its visual impact on the surrounding area. The applicant sought legal advice challenging what he considers to be “the Council’s incorrect position on this matter”; this is at the heart of the applicant’s procedural claim, as although it is also alleged that “the Council has not adopted [...] a collaborative approach” none of the evidence before me substantively addresses this second point.

5. The substantive claim follows from the Council’s assessment of the impact of the proposed development on the surrounding area. Having done so (wrongly, in the applicant’s view), and having previously granted planning permission for a single additional storey on the appeal property, it is contended that the Council failed to objectively assess the application, delayed a development which should clearly have been permitted, and failed to clearly and objectively substantiate its position.
6. The applicant’s appeal statement drew my attention to several other appeal decisions in which Inspectors (determining appeals seeking prior approval under the provisions of Schedule 2, Part 20, Class A of the General Permitted Development Order 2015 (as amended) concluded that the effect of the proposal on the character or appearance of the wider area was not a relevant consideration. However, a High Court judgment handed down after the appeal was submitted³ confirmed that such consideration can also include the effect on the wider area.
7. For reasons which are set out in my main decision, in this case I found the visual relationship of Anayah Apartments with its surrounding buildings, and the effect of the proposed development on the wider streetscene, to be a relevant matter in considering the impact on the external appearance of the host building. I therefore cannot conclude that the Council’s actions, in taking the same approach, were unreasonable in procedural terms.
8. In respect of the substantive element of the claim, for reasons which are again set out in the main decision, I broadly agreed with the Council’s assessment of the impacts of the proposed development. I found that the Council’s appeal submissions supported and substantiated its original decision, and the appeal was dismissed. I therefore cannot reasonably conclude that the Council prevented or delayed development which should clearly be permitted.

Conclusion

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

M Cryan

Inspector

³ *CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC* [2022] EWHC 208 (Admin)