Costs Decisions

Site visit made on 15 November 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Costs application A in relation to Appeal Ref: APP/V5570/W/22/3292885
185 Caledonian Road, London N1 0SL

- 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 P Brons, 185 Caledonian Road Limited for a full award of costs against the Council of the London Borough of Islington.
- The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for 'the partial change of use of the basement and ground floor from retail (Use Class E) into 2x residential units (Use C3) at the rear with retained retail use at front'.

Costs application B in relation to Appeal Ref: APP/V5570/W/22/3292886
187 Caledonian Road, London N1 0SL

- 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 P Brons, 187 Caledonian Road Limited for a full award of costs against the Council of the London Borough of Islington.
- The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for 'the change of use of the ground and lower ground floor levels (partial) and first and second floor levels (whole) from retail (Use Class E) into 2x residential units (Use C3) with retained retail use at front'.

Decisions

Costs Application A - Appeal Ref: APP/V5570/W/22/3292885

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

Costs Application B - Appeal Ref: APP/V5570/W/22/3292886

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

Preliminary Matters

3. This decision letter deals with two applications for costs in respect of adjoining sites. Each application relates to an appeal concerning a proposal made pursuant to Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). I have dealt with each appeal and costs application on its individual merits. Given the overall similarities in the proposals and applications however, I have dealt with both costs applications in this single costs decision letter to avoid duplication.

Reasons

4. The Planning Practice Guidance ('the PPG') advises that costs may be awarded where a party 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 making vague, generalised or inaccurate assertions which are unsupported by any objective analysis; failing to produce evidence to substantiate each reason for refusal on appeal; refusing planning permission on a ground capable of being dealt with by conditions; and acting contrary to well-established case law.

5. In refusing the applications subject of Costs Application A and Costs Application B, the Council referred to the impact of the proposals on the character and sustainability of the Barnsbury Conservation Area ('the CA') through the reduction in area of commercial, business and service (Use Class E) floorspace. In broad terms, it suggests that the smaller resulting size of the units would reduce their likelihood of remaining occupied, detracting from the mixed character of the host local shopping frontage which currently contributes to the character of the CA.

6. The applications were accompanied by statements from commercial agents which suggested that small to medium units are most sought after and desirable to the market in the local area, but little further detail to corroborate these comments was provided. Moreover, while each of the appeal submissions include details of the floorspace of other commercial premises nearby, it is not clear that this detail was presented to the Council at the time that it determined the applications. In this context, I consider it was reasonable for the Council to reach a different view to the applicants as to the future occupation of the units and consequent effect on the CA.

7. I have found in my appeal decisions that the Council failed to offer clear evidence to properly substantiate some of the assertions made about the effect of the proposals. In particular, suggestions that floorspaces of around 60sqm are more sustainable, and that the area of the units on the appeal sites would be insufficient for the showcasing of products/services, circulation, browsing and purchasing. Even so, its concerns with regard to the effect of the proposals on the character and sustainability of the CA were reasonable and intelligible overall, and I find that they were not entirely without merit. I have ultimately come to a different conclusion from the Council. However, this is a matter of planning judgement, and I consider that the Council's reasons for refusal in relation to the CA were sufficiently justified. I do not therefore find that it has behaved unreasonably in refusing the applications, and notwithstanding its failure to substantiate some of its arguments, I am not persuaded from the evidence before me that this has caused unnecessary or wasted expense in the appeal process.

8. The scheme which is the subject of Costs Application A at 185 Caledonian Road included an additional reason for refusal in relation to the provision of adequate natural light to all habitable rooms of the dwellinghouses. The appellant had provided a Daylight and Sunlight Assessment ('DSA') with the application which indicated that the development would meet recommended standards for

daylight and sunlight within guidance produced by the Building Research Establishment. However, this was on the basis of external alterations to No 185 that would see fenestration provided to the rear of the building at lower ground floor level; and the enlargement and removal of bars from fenestration to the rear of the building and installation of rooflights to the ground floor.

9. The Council granted planning permission for development which included these alterations on 18 January 2022[1] ('the Permission'), and I have found in my Appeal A decision that a condition could be imposed on the appeal requiring that the alterations to fenestration and the installation of rooflights relied on by the DSA and permitted under the Permission were completed, in effect providing for adequate natural light before any prior approval took effect. However, at the time that the Council determined the appeal application, the Permission had not been granted. Accordingly, implementation of the works would not be assured, and the weight that could be attached to this as a fallback would in my view be limited. Moreover, I consider that a condition to require the implementation of works within an as yet undetermined planning application would not have been reasonable, and would be unlikely to be enforceable. That the Council did not impose such a condition was not therefore unreasonable, and I find that it did not act contrary to well-established case law.

Conclusion – Costs Applications A and B

10. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, Costs Application A and Costs Application B, each for a full award of costs, are refused.

J Bowyer

INSPECTOR

[1] Application ref P2021/3133/FUL