



Costs Decision

Site visit made on 2 November 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Costs application in relation to Appeal Ref: APP/N5090/W/21/3276413 53 Ridge Hill, Golders Green, London NW11 8PR

- 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 Adil Malik of Metro Properties (London) Ltd for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for: Conversion of existing dwelling house into 2no. self-contained flats. One x 2 bed flat on the ground floor and one x 4 bed flat on the two upper floors, together with associated amenity space, refuse and recycling storage, secure bicycle storage and off-street 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 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.
3. In the context of an application for an award of costs, unreasonable behaviour may be procedural – relating to the process, or substantive – relating to the issues arising from the merits of the appeal. The applicant considers the Council has acted unreasonably with respect to the substance of the matter, drawing on examples of substantive unreasonable behaviour set out in the PPG.
4. The applicant considers that the Council prevented and delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations (such as appeal decisions).
5. However, the applicant acknowledges that matters such as character (which the applicant refers to as the basis for the refusal reason) are open to interpretation as opinions on such matter differ. Moreover, the applicant acknowledges that the Council's conclusion is likely to be an exercise in judgement and I agree.
6. The Council had a different view on the harm which would arise from the development and it was entitled to take this view, drawing on an adopted development plan policy (DM01) which resists the conversion of dwellings into flats in roads characterised by houses and explaining how this policy was

relevant in refusing the application. It also drew on other development plan policies relevant to character (CS4 and CS5), to support its case. So I do not agree that the Council prevented or delayed development which should clearly have been permitted.

7. As the appellant indicated in their submissions, there may likely become a point where the cumulative impact of subdivisions could be said to impact upon the character of the area. The Council was entitled to take the view it did in this case on cumulative impact, notwithstanding that others may have a different view on the point when cumulative impact occurs.
8. The applicant considers that the Council failed to produce evidence to substantiate each reason for refusal. In respect of the character of Ridge Hill, although I reached a different conclusion to the Council, I am satisfied that it set out its evidence and its assessment in its submissions and so it substantiated its case in respect of this issue.
9. In respect of the loss of a large single family dwelling house, as set out in my appeal decision, the Council's evidence indicates that its concern is one of character and not housing stock. In other words, the loss of a large single family dwelling house is part of its case on character, rather than a discrete issue. Nothing in the Council's submissions supports a view to the contrary, so there was nothing separate for the Council to substantiate in this regard.
10. The applicant considers that the Council made vague, generalised and inaccurate assertions about a proposal's impact which are unsupported by objective analysis. Whilst I reached a different conclusion to the Council on the level of harm arising from the effect of the appeal development on character, its case was based on effects identified in the reasoned justification for a relevant evidence-based development plan policy, ie DM01.
11. The applicant considers that the Council has objected to elements of a scheme which an Inspector has previously indicated to be acceptable. But there is no evidence of any relevant appeal decision on this site for the development which is before me. So the applicant's case in this regard must relate to the appeal decisions on other sites referred to.
12. Those appeal decisions are not necessarily directly applicable to the appeal site, given that the wording of the relevant development plan policy indicates that it requires an assessment of the road that the appeal site is on. Moreover, the circumstances of other sites will not necessarily be the same as those on the appeal site. Each case must be considered on its own merits, a point the Council made in its report.
13. Only the appeal decision at 13 Ridge Hill¹ is on the same road as the appeal site. But that site is some distance from it and the Inspector in that case drew a distinction between different parts of the road. There is no question of whether the Council took proper account of this decision given that it quoted it in its submissions.
14. All of the other decisions referred to were either in a different location, had a different planning history or constituted a different form of development to the appeal scheme before me. As such, there can be a significant limit to how much other appeal decisions may support a proposal elsewhere.

¹ APP/N5090/W/20/3245224 dated 16 October 2020

15. The applicant states that the Council has not taken into account the provisions of the London Plan 2021, particularly its objective of making the best use of land, supporting high density development and exploring the potential to intensify the use of land. But the London Plan 2021 is referred to in the Council's statement and in its report the Council recognised that flat developments can make more efficient use of urban land. So I am satisfied the Council balanced this with the effect on character but simply reached a different conclusion to the appellant.
16. Whilst the Inspector in the 30 Wessex Gardens² decision attached very significant weight to the London Plan 2021, that was in the context of a site with a superior Public Transport Accessibility Level (PTAL) rating. Whereas the appeal site before me has a PTAL rating of poor. This is a relevant factor for conversions. So it is not necessarily the case that making a more efficient use of land 'overrides' character considerations from an older development plan policy, as is suggested by the applicant.
17. The applicant considers that the Council failed to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
18. But I do not agree that the appeal was avoidable as it seems to me that the main parties fundamentally disagree on the effect of such a development on character and the harm arising from that effect. These are matters of judgement and so different decision-makers may reach different conclusions, particularly in respect of a policy containing the phrase "not normally", as is the case here.
19. My attention has been drawn to correspondence between the appellant and officers of the Council, which the applicant considers demonstrates a lack of assessment of the appeal development by the Council. But some of this correspondence is with officers not directly handling the application in question. So they cannot be expected to have all the facts necessary to assess the application or give a definitive view of what the outcome of it should be.
20. In any event, the appropriate time for dialogue on the merits of a proposal is at the pre-application stage and it is clear from the planning application form that no pre-application advice was sought in this case. Whilst I appreciate that seeking pre-application advice is not a pre-requisite of the planning process (and that the Council's decision was not made in time), pre-application advice is clearly endorsed by the National Planning Policy Framework and it should not be substituted for protracted correspondence after an application has been made.
21. I do not condone any delay in the Council making a decision. But the mechanism to appeal against non-determination exists where incidences of delay occur. Otherwise, the points of merit raised by the agent within correspondence largely seem to draw on the outcome of other appeal decisions which, as set out above, do not dictate the outcome of other appeals as each case must be considered on its own merits.

² APP/N5090/W/20/3264108 dated 22 March 2021

22. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

L Perkins

INSPECTOR