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## Costs Decision

Site visit made on 20 December 2022

**by E Dade BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 9 January 2023**

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### **Costs application in relation to Appeal Ref: APP/D5120/W/22/3302019 28 Upper Wickham Lane, Welling DA16 3HF**

- 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 I Hasan of Sherman Investments Ltd for a full award of costs against Council of the London Borough of Bexley.
  - The appeal was against the refusal of planning permission for the conversion of existing self-contained duplex flat to 1 x 1 bed and 1 x 2 bed self-contained flats.
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### **Decision**

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

### **Reasons**

2. Paragraph 030 of the Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant states that the appeal was unnecessary as the proposal complies with the development plan and there were other considerations that the Council failed to take account of when reaching its decision.
4. The applicant asserts that the proposal would provide an adequate standard of accommodation and thus supports the objectives of UDP Policy H11. The Council's Decision Notice provides clear reasoning regarding the proposal's conflict with Policy H11 of the Bexley Council Unitary Development Plan (2004) (UDP) which resists the conversion of existing dwellings with gross internal floor area (GIFA) of less than 110sqm as *originally built*, not as it currently is. The standard of the proposed accommodation did not form a part of the Council's reason for refusal.
5. As set out in my decision, since its original construction the building has been modified to accommodate the duplex flat. Therefore, the Council has not erred in its estimation of the GIFA of the original dwelling, nor in finding conflict with the development plan on this basis.
6. The applicant states that UDP Policy H11 is out of date due to its age, and that the Council has not had regard to draft policies contained within an emerging Local Plan. Paragraph 219 of the Framework indicates that existing policies should not be considered out-of-date based upon their age, rather due weight should be given according to their degree of consistency with the Framework.

Paragraph 48 of the Framework states that weight may be given to emerging policies according to their stage of preparation, the extent to which there are unresolved objections, and the degree of consistency with the Framework. Consequently, the amount of weight to be afforded to emerging policies and policies which pre-date the Framework is a matter of planning judgement.

7. Therefore, whilst in my decision I reached a different conclusion, I do not consider that the Council behaved unreasonably when determining the proposal against the development plan policies.
8. For the reasons set out above, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision.

### **Conclusion**

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

*E Dade*

INSPECTOR