



Costs Decision

Site visit made on 24 January 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2023

Costs application in relation to Appeal Ref: APP/T5150/W/22/3293766 16 Wotton Road, London NW2 6PX

- 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 Simeon Anderson for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of planning permission for change of use of ground floor office (Use Class E(g)(i)) to live work unit (Use Sui Generis).
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Decision

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

Reasons

2. Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only 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. The applicant's application for costs is based on the alleged unreasonable behaviour of the local planning authority ('LPA') and wasted expense, for substantive reasons, as considered below.
4. To address the concerns raised by a previous Inspector in respect of a similar proposal, the applicant has sought to provide an area within the workspace element of the proposed live/work unit, which is identified as an 'Courtyard space of about 30sqm' (internal courtyard). This is intended to provide both amenity space and outlook.
5. The LPA advises that it did not consider the internal courtyard to form part of the residential outlook, because of its separation and enclosure from the living space. Even so, because the internal courtyard is not clearly referenced in the LPAs officer report, I cannot be certain that this was considered as part of the LPAs initial assessment. This, in my view constitutes unreasonable behaviour.
6. The LPAs reason for refusal also refers to Policy DMP 18 of the Brent Development Management Policies Plan (2016) ('DMP'). Notwithstanding the supporting text to this Policy, the wording of the Policy, specifically requires that the size of dwellings should be consistent with London Plan Policy 3.5 Table 3.3 Minimum Space Standards for New Dwellings. In this case, the LPAs officer report confirms that the dwelling far exceeds the minimum space standard requirement outlined in the London Plan. Therefore, it was unreasonable for the LPA to find conflict with this Policy.

7. Policy DMP 19 of the DMP, requires that external private amenity space is of a sufficient size and type to satisfy its proposed residents' needs and then sets out expected size requirements.
8. The LPA argue that the poor outlook to the 'living' element of the work/live unit would be directly attributed to by the lack of 'quality' of the amenity space. I acknowledge that amenity spaces can contribute to outlook. Indeed, the LPAs officer report refers to the standard of external space not being high and the need for this to be taken into account when considering the overall living conditions. However, the LPA officer report, concludes that because amenity space was not considered to be an issue worth of dismissal of the appeal by the Inspector or found unacceptable in the previous application this is considered acceptable. Therefore, the LPAs assessment of the proposal is not consistent with finding conflict with Policy DMP 19 of the DMP.
9. Drawing on the above reasons, the LPA acted unreasonably with regard to not clearly evidencing that the internal courtyard formed part of its initial assessment of the quality of the proposed outlook for the living space and by concluding that the proposal conflicts with policies DMP 18 and 19 of the DMP.
10. However, to make an award of costs I need to be satisfied that these matters resulted in unnecessary or wasted expense in the appeal process.
11. With regard to the internal courtyard, based on the LPAs submissions even if this had been clearly identified in its initial assessment, the LPA is of the view, that this would not make any contribution to the outlook from the living space. This is a matter of planning judgement for the decision maker.
12. Furthermore, the LPAs reason for refusal and submissions clearly refers to the outlook from the proposed living space, which the LPA found to be unacceptable and in conflict with the design aims of Policy DMP1 of the DMP. Accordingly, and while I cannot be certain, it seems more than likely that even if the LPA had identified the internal courtyard in its initial assessment and also not relied on Policies DMP 18 and 19 of the DMP, it would still have found the outlook from the living space to be unacceptable and in conflict with the development plan. Therefore, it is highly likely that an appeal could not have been avoided.
13. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

M Aqbal
INSPECTOR