



Costs Decision

Site visit made on 5 December 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2023

Costs application in relation to Appeal Ref: APP/A5840/W/22/3303309 1B, C and D Astbury Road, London SE15 2NL

- 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 Curtis Brown and Mrs Krishnaveni Brown for a full award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the refusal of planning permission for the construction of a roof extension forming a new floor, retention of a commercial unit and conversion to provide 1 one-bedroom and 4 two-bedroom residential dwellings with rear facing balconies, and refuse and cycle storage.
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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 process¹.
3. Paragraph 049 of the PPG gives examples of unreasonable behaviour by local planning authorities². These include:
 - 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
 - refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The applicants' claim for an award of costs essentially revolves around these two examples. In broad terms, they have drawn my attention to several examples of provisions either of the development plan (both the 2022 Southwark Plan and the London Plan 2021) or the National Planning Policy Framework which, they argue, are supportive of the appeal proposal. However, it in my experience it is (almost) inevitable that a development proposal will be supported by, or at very least comply with, some elements of either the development plan or national policy. It does not follow from this that, where a

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Reference ID: 16-049-20140306

Local Planning Authority has identified conflict with other aspects of the development plan or the Framework it has necessarily behaved unreasonably.

5. The applicants have further set out specific criticism of the Council's reasons for refusal. These matters were central to determining the appeal, and as a consequence they have been addressed at considerable length in my main decision.
6. In respect of the first reason for refusal, I acknowledge that some of the flats within the appeal property fall short of the expected standards in respect of living space, daylight and sunlight. As the proposed Flat F would be on two storeys, the argument that it would comply with the required space standard for a single storey dwelling is of little relevance. In my appeal decision I have considered the potential improvements in what would become Flats C and D in the context of the scheme as a whole. I find that the Council's decision in this respect has not prevented or delayed development which should clearly be permitted.
7. In respect of the second reason for refusal, I agree with the applicants that the appeal site is not part of a terrace where there is an unbroken run of butterfly roofs. This is one of the criteria in the Council's 2015 *Technical Update to the Residential Design Standards (2011)* Supplementary Planning Document ("the SPD") to be taken into account when considering proposals for roof extensions. However, the reason for refusal and the Council's officer report referred to the loss of a *distinctive* butterfly roof, rather than there being an unbroken run of such roofs. For reasons which are again set out in my main appeal decision, I found that the proposed development would not comply with other criteria of the SPD, and would be harmful to the character and appearance of the area. Again, I find that the Council's decision in this respect has not prevented or delayed development which should clearly be permitted.
8. In respect of the third reason for refusal, the applicants suggest that a contribution to the provision of affordable housing could "easily be secured via a planning condition". The provision of affordable housing is one which, strictly speaking, is *capable* of being dealt with by conditions. However, for reasons which are again set out in my main decision I found that this case was not one in which relying on such a condition would have been preferable to the use of a planning obligation. The Council's decision in this respect was not therefore unreasonable.

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