
Costs Decision

Hearing held on 14 February 2023

Site visit made on 14 February 2023

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2023

Costs application in relation to Appeal Ref: APP/V5570/W/22/3298080 91 Grosvenor Avenue, Islington, London N5 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 Rajesh Patel for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the refusal of planning permission for change of use of existing ground floor unit from Class E (retail) to Class C3 (residential) to provide 1 x one-bedroom flat and minor front external alterations.
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Decision

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

The submissions for Mr Rajesh Patel

2. The costs application was made orally at the hearing. In summary, the appellant considers that the refusal of the planning application has led to unnecessary delays and costs associated with pursuing the appeal and providing additional information. The appellant argues that the Council's withdrawal of the fourth refusal reason at the appeal stage demonstrates unreasonable behaviour. The Council erred in giving greater weight to local policies which the appellant considers are out of date, including in relation to affordable housing on small sites, internal floorspace and external amenity space. Finally, the appellant argues that the Council's view on the viability of the retail use was unreasonable given the details provided by the appellant.

The response by the Council of the London Borough of Islington

3. The Council gave its response at the hearing. In summary, the Council considers that it has acted reasonably throughout the application and appeal process. The application was determined in a timely period and followed on from a previously refused application, which included reasons for refusal that the appellant had the opportunity to address. The Council accepts that whilst some of its development plan policies are now dated, they remain current policies and the Council took the relevant London Plan policies into account. The Council contends that the engagement of a planning agent, production of supporting documents and payment of professional fees are part of the application process. It was reasonable of the Council to withdraw the fourth reason for refusal, subject to a condition, following submission of further information. The submission of the Statement of Common Ground (SoCG) demonstrates that the Council worked proactively with the appellant.

Reasons

4. Planning Practice Guidance (the 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 expense in the appeal process. It is an accepted principle that parties in planning appeals normally meet their own expenses. An award of costs does not extend to indirect losses.
5. Based on the evidence before me, the Council did not delay in making their decision on the application, which was determined within the required statutory time period from the date that it was validated. Moreover, given that the application and appeal follow on from a previously refused application, the appellant had the opportunity to address the reasons of refusal.
6. It was not unreasonable of the Council to withdraw the fourth refusal reason following the submission of further details as it demonstrates a willingness to engage in the appeal process as does the submission of the SoCG.
7. The appellant contends that the Council's approach to affordable housing requirements is unreasonable in the context of the related Court of Appeal decision and the requirements of national policy which set a higher threshold for affordable housing provision than local policy. I have concluded that the evidence of affordable housing need indicates that in this particular case the requirements of Core Strategy Policy CS12 should prevail over national policy and guidance. As such I consider this reason for refusal has been justified.
8. In relation to internal floorspace, the Council has assessed the proposal against the minimum floorspace requirements set out in Policy DM3.4 of the Development Management Policies (DMP), but it also refers to the standards set out in Policy D6 of the London Plan. While somewhat dated, I have found no evidence that the DMP policies used in the reason for refusal relating to living conditions are not in general conformity with the London Plan.
9. The Council's view that the loss of the retail use was unjustified is reasonable given the lack of any marketing evidence as required by DMP Policy DM4.6. The officer report shows that an analysis of the merits of the proposal was undertaken having regard to the information submitted by the applicant and the Council has substantiated its stance.
10. I have reached the same decision as the Council regarding the merits of the proposal. That does not vindicate any procedure or reasoning on their part. However, it establishes that it is not the case that planning permission should clearly have been granted. The dispute was a matter of planning judgement, rather than the applicant being forced into an appeal by consequence of unreasonable behaviour or delays in determining the application by the Council.

Conclusion

11. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as set out in the PPG, has not been demonstrated. The evidence does not justify an award of costs. The application for an award of costs is refused.

M Ollerenshaw

INSPECTOR