



Costs Decision

Site visit made on 31 October 2022

by A Hunter LL.B (Hons) PG Dip MA MRTPI

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

Decision date: 25 April 2023

Appeal Ref: APP/V5570/W/22/3300890

Land adjacent to 1 Dresden Road, Islington, London N19 3BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 sections 78,322 and Schedule 6, and the Local Government Act 1972, section 250(5)
 - The appeal is made by Mr Romer of MMM Management Ltd for a full award of costs against the Council of the London Borough of Islington.
 - The application Ref 2021/0954/FUL, is dated 26 March 2021.
 - The development proposed is the erection of a three storey 4 bedroom end of terraced dwelling, with associated private amenity space and boundary treatments.
-

Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. An identical planning application was approved by the Council in 2017, which has now lapsed. One of the main changes to the Development Plan since the 2017 permission was granted is The London Plan, which was adopted in March 2021 (LP).
4. The applicant seeks a full award of costs, and the Council has responded to contest the claim. The applicants claim against the Council is two-fold relating to (i) lack of cooperation; and (ii) failure to provide information.
(i) lack of cooperation
5. The Council has failed to determine the planning application that was submitted to them on 26th March 2021, it should have been determined by 16th July 2021. It is understood that the Council raised with the applicant comments made by consultees in response to the application. According to the Council the applicant notified them on 7th September 2021 that they did not wish to make any changes to the proposal, consequently it was for the Council to determine the scheme. I understand that the applicant agreed extensions of time until 6th May 2022 for the Council to make a decision.

6. After that point the applicant has provided details of how they regularly contacted the Council for a decision. The Council has provided no firm reasons why they had not determined the proposal from 7th September 2021 onwards. The Council rely on internal committee processes and proceedings as their main reason. The applicant was entitled to a decision in a timely manner. It is not for me to determine whether the application should have been determined under officer delegation or needed to go before a particular Committee, but I am content that more than sufficient time was available for the Council to determine the application in whichever method they deemed proper, before the applicant's appeal was lodged on 10th June 2022. I find the delay in this case to be unreasonable. Nevertheless, I recognise that since 17th July 2021, the applicant could have appealed non determination of the application and was under no obligation to agree to any extensions of time.
7. The appeal has been allowed by separate decision and required a Unilateral Undertaking (UU) to secure developer contributions. The applicant's email correspondence to the Council on 20th September 2021 indicates they are aware a UU is required, although I note the first UU was only submitted to the Inspectorate on 24th October 2022 after the Council's Appeal Statement had been submitted, the final version of the UU was not provided until 10 March 2023. As such, for the time that the Council was able to issue a decision there does not appear to have been a suitable mechanism of delivering the required developer contributions. As such the Council would have likely refused the application on this basis. This in turn would likely have generated an appeal.
8. Due to the lack of any legal agreement or undertaking to secure the contributions, I do not find that the unreasonable delays would have caused the applicant unnecessary expense as it is likely an appeal would not have been avoided without a suitable agreement to secure the required developer contributions. I therefore find that although the Council's delays have been unreasonable, this has not led the applicant to incur additional costs associated with submitting an appeal.

(ii) failure to provide information

9. The Council requested a fire safety strategy by email on 10th June 2022, the same day the applicant submitted an appeal against non-determination of the application. Given the likely preparation time for making the appeal, along with preparing the supporting documents, it would strongly indicate that the appeal was substantially prepared, if not submitted at the time the request from the Council for the fire safety strategy was made.
10. The fire safety strategy was requested pursuant to Policy D12 of the LP. It is not clear why this information was not requested at the time the application was made, or soon after, if this information was deemed necessary. The applicant has submitted information within their final comments, with their assessment of how the proposal meets the fire safety aspects within LP Policy D12. Equally, it is also not unreasonable to expect a professional planning consultant to be aware of this policy requirement.
11. The Council has commented on the applicant's fire safety information and has not objected to its coverage or its conclusions but requested a further detailed condition on this aspect requiring a separate standalone document to approve with associated plans.

12. The wording of Policy D12 of the LP is clear that a Fire Statement should only be required for major development. The scheme is not major development and I agree with the applicant that the Council could not reasonably insist on a Fire Statement in this case. The policy requires consideration of fire safety from the outset, and such information should be proportionate to the proposal in question. In the circumstances, I find that the Council have reasonably applied LP Policy D12 by requesting a fire safety strategy and the information provided has been proportionate to the scale of the proposal.
13. The Council's delay requesting this information is unreasonable behaviour. Although this information was requested late, this information was ultimately required by LP Policy D12, regardless of when it was submitted. In the circumstances and mindful that without a suitable UU the Council could not have approved the application in any event, I do not find that the Council's late request has put the applicant to unnecessary or wasted expense in this case.
14. Consequently, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated.
15. For the above reasons, an award of costs is not justified.

A Hunter

INSPECTOR