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## Costs Decision

Site visit made on 27 February 2023

**by David English BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 May 2023**

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### **Costs application in relation to Appeal Ref: APP/N5090/W/22/3306676 1 Albert Road, New Barnet, Barnet EN4 9SH**

- 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 C/O UPP for a full award of costs against the Council of the London Borough of Barnet.
  - The appeal was against the refusal of planning permission for the demolition of the existing buildings and erection of a part 4 storey, part 5 storey building to provide 9no. self-contained residential units, together with basement car park, cycle storage, external amenity space and refuse and recycling facilities.
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### **Decision**

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

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (the 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 process. Claims can be procedural (relating to the process); or substantive (relating to the issues arising from the merits of the appeal).
3. Paragraph 049 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to, amongst other things, preventing or delaying development which clearly should be permitted having regard to its accordance with the development plan, national policy and any other material considerations. The applicant seeks a full award of costs and claims that the Council acted unreasonably in refusing planning permission for the second and third reasons for refusal and this has prevented development that clearly should be permitted.

### *The Council's decision*

4. The PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal. Notwithstanding the Planning Committee did not agree with the Officer recommendation, the reasons for refusal plainly identify the Council's concerns. They also set out the planning policies contained in the development plan with which the Council consider the proposal would be in conflict. These planning policies were clearly referenced in the Officer's report to the Planning Committee, and elected Members would be aware of their content and purpose.

5. The purpose of the Council's appeal statement is to amplify the matters which are set out in the reasons for refusal, and this is adequately achieved. The statement provides a clear explanation of the Council's position with regard to the two reasons for refusal about which the applicant makes their claim for costs. The statement also explains matters discussed by elected Members prior to them reaching a decision.
6. It will be seen from my decision that this is not a case where development should clearly have been permitted. I have not found that the Council acted unreasonably in refusing the planning application.

*Reason for Refusal No 2 (noise and air quality)*

7. It is entirely reasonable in this case that the Council would want to be satisfied that use of the outdoor areas at the existing public houses would not cause unacceptable harm to future occupiers of the proposed development. From the information available to elected Members, and to me in considering the associated appeal, for the reasons given in my decision on the appeal, I have found this to be inadequate to demonstrate these concerns have been satisfactorily addressed. As a consequence, I find that the Council has not acted unreasonably in expressing concerns about the effects on living conditions for future occupiers in respect of noise and poor air quality associated with the use of external seating areas at the adjacent pubs.

*Reason for Refusal No 3 (overheating and ventilation)*

8. The applicant claims that they had to go to an expense of paying for a Summertime Overheating Analysis report (the SOA), and that this was not required because the proposal is not a major development for the purposes of the relevant planning policies. This claim is supported by reference to the pre-application advice (the pre-app advice) which the applicant indicates provides confirmation that '*...an overheating report is only required on major applications which have south facing habitable room windows.*' The Appendix to the pre-app advice sets out relevant advice from the Council's Environmental Health Department. This is not expressed in the precise terms stated by the applicant. Nevertheless, I can understand why the applicant would interpret the advice given in the way they have.
9. The pre-app advice states that '*...the scheme should consider heating and cooling of the proposed residential units early in the design stage*'. It also set out those planning policies relevant to the consideration of the proposal. This included Policy SI 4 of The London Plan (March 2021) (the London Plan) on managing heat risk. Part A of Policy SI 4 of the LP requires that '*Development proposals should minimise adverse impacts on the urban heat island through design, layout, orientation, materials and the incorporation of green infrastructure.*'
10. Accordingly, whatever scale of development is proposed, the development plan requires that some consideration is given to this matter by the Council. It follows that such consideration would ordinarily be assisted by information provided with a planning application. The applicant was made aware of this relevant policy and, notwithstanding any interpretation of the terms expressed in the pre-app advice, it is reasonable for the Council to seek to be assured on matters concerning the urban heat island in accordance with Policy SI 4 of the London Plan.

11. I recognise that the applicant will have incurred expense in addressing this matter that comprises part of the Council's third reason for refusal. However, I have found that this information was necessary to address the issue of the urban heat island effect and the Council did not act unreasonably in requesting it.

*Additional matters raised by the Council in its Statement of Case*

12. The applicant adds further claims for costs in their response to the Council's Statement of Case, specifically that the Council acted unreasonably by introducing new areas of concern in its Statement of Case. The applicant claims that additional matters to those given in the reason for refusal have been raised by the Council in respect of noise from the proposed car lift, odours from bins at the neighbouring pubs on refuse collection days, and a failure by the applicant to provide details of refuse storage arrangements at the proposal.
13. As I have explained in my decision on the appeal, these additional concerns are relevant considerations in the context of reasons for refusal relating to the provision of suitable living conditions for future residents. While noise associated with the car lift could be addressed through planning conditions, it is not unreasonable for the Council to have drawn attention to this matter. Odours associated with bin collections are a matter related to the second reason for refusal in respect of air quality and, while I have concluded this would not cause harm, it is reasonable that the Council would raise this matter.
14. It will be seen from my decision that I have acknowledged that the Council was incorrect in its view regarding the provision of information on refuse storage. This could be regarded as evidence of a lack of thoroughness in its assessment of the plans. However, such action does not amount to unreasonable behaviour resulting in wasted expense given the very limited reference to this point in the applicant's response to the Council's case.

**Conclusion**

15. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*David English*

INSPECTOR