The Planning Inspectorate

# Costs Decision

Site visit made on 30 May 2023

**by C Carpenter BA MA MRTPI**

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

**Decision date: 10 July 2023**

**Costs application in relation to Appeal Ref: APP/D5120/W/22/3313841**
**1, 1A & 1B Central Avenue, Welling, Bexley DA16 3AX**

- 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 Central Avenue (Welling) Ltd for a partial award of costs against the Council of the London Borough of Bexley.
- The appeal was against the refusal of planning permission for a roof-top extension to provide an additional storey with change of use of part of the first floor and alterations to provide 6 x one-bedroom flats.

## Decision

1. The application for a partial award of costs is refused.

## Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 process.

3. The applicant seeks a partial award of costs in relation to the Council's first reason for refusal, which refers to a lack of amenity space for flats 1, 2 and 3 and under-provision of cycle parking. The applicant does not seek an award of costs in relation to the second reason for refusal.

4. The applicant considers the Council has exhibited unreasonable behaviour with respect to the substance of the matter under appeal. They argue the Council has failed to act consistently and failed to grant a further planning permission for a scheme that is the subject of a recently expired permission[1], where there had been no material change in circumstances.

5. In considering the issue of external amenity space, the Council took account of the Mayor's Housing Design Guide (HDG) in its decision on 18/01011/FUL. The HDG was planning guidance and therefore a material consideration in decision making. However, it was not part of the development plan for Bexley at the time of the Council's decision. In its consideration of the appeal scheme, the Council found a conflict with Policy D6 of the London Plan (LP). The LP was made in March 2021 and was therefore part of the development plan for Bexley when the Council took its decision on the appeal scheme.

6. Under section 38(6) of the Planning and Compulsory Purchase Act 2004, decisions must be determined in accordance with the development plan unless

[1] Application reference 18/01011/FUL granted permission in February 2019

material considerations indicate otherwise. Consequently, even if the standard for external amenity space in the HDG is no different to the standard in Policy D6 of the LP, the conflict the Council identified between the appeal scheme and Policy D6 of the LP was determinative. Therefore, there had been a material change in circumstances since the Council's decision on 18/01011/FUL, so the Council has not been inconsistent and has not acted unreasonably in this regard.

7. In relation to bicycle storage, provision for 6 bicycle parking spaces on site was secured via planning condition in the Council's decision on 18/01011/FUL and was shown on the plans submitted with that application. The proposed provision of 6 bicycle parking spaces on site is also shown on the plans for the appeal scheme. However, the Council found this provision would fail to meet the standard in Policy T5 of the LP, which requires 8 spaces for the number and size of flats proposed. In my decision on the appeal scheme, I agree with the Council's finding on this matter. For the reasons explained above, the standard in Policy T5 the LP was a material change in circumstances since the Council's decision on 18/01011/FUL, so the Council has not been inconsistent and has not acted unreasonably in this regard.

8. Turning to the question of a possible planning condition to address the shortfall, the Council considered in its decision report whether it would be possible to provide more bicycle parking spaces on site. It concluded that it would not be possible and therefore found the shortfall could not be addressed through a planning condition. I reached a different conclusion on this question in my decision, based on the evidence before me. Nevertheless, despite this difference in judgement, I consider the Council gave due consideration to the possibility of a planning condition to secure additional bicycle parking spaces and therefore it has not acted unreasonably in this regard.

9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*C Carpenter*

INSPECTOR