



Costs Decision

Site visit made on 25 June 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 July 2023

Costs application in relation to APP/T5150/W/22/3307786 40 Meadow Garth, Brent, London NW10 0SJ

- 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 Dr Abdulla Kallian for a full award of costs against Brent Council.
 - The appeal was against the refusal of planning permission for the proposed conversion of single dwellinghouse to two self-contained flats.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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. This application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense for the applicant.
3. The applicant is clear that they are seeking costs in regard to the fees of the current planning application, which they allege should not have been required. The applicant has provided significant detail regarding the planning history of the site and actions by the Council that it deems to be unreasonable in relation to other applications that were not the subject of this appeal. However, the PPG is clear that costs cannot be claimed for the period during the determination of the application, and that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage. I must make my decision on this basis.
4. I acknowledge the comments on former applications at the site for schemes with a high similarity to that proposed. The applicant refers to pre-application discussions in 2015 and an assurance that planning permission would be granted at that time. Permission was refused, but the Council is not bound to determine an application in accordance with pre-application advice. The applicant states that no notification of this was received, and that they were under the impression permission had been granted. Although unclear how this occurred, it remains that planning permission was not granted for that scheme at that time. As such, further applications or appeals in respect of the proposal would have been inevitable, such that this did not lead to the applicant incurring unnecessary expense in the current appeal process.
5. The applicant also refers to an application at the site with reference 21/4312. This was refused for the same reasons as the current application, in addition to a lack of Flood Risk Assessment (FRA). The applicant alleges that, following the refusal of that

application, they were forced into resubmitting the application rather than appealing. However, there is nothing substantive to suggest that the applicant could not have exercised their right of appeal. It does not appear to me on the submitted information that the Council was unreasonable in refusing this application. In any event, even if the Environment Agency had the opportunity to review a revised FRA at this time, it is clear that the proposal would still have been refused for the other reasons such that a further application or appeal would have remained inevitable.

6. With regard to the current application, the scheme was assessed against Policy BH11 of the Brent Local Plan 2019-2041 which had not been in place during previous determinations. Nevertheless, it was adopted policy in accordance with which the Council was bound to make its assessment. While this requirement would not have arisen if previous applications were approved, it remains that planning permission was not granted at these stages. The Council found the proposal did not comply with this policy, and it can be seen from my decision that I agree. Similarly, although the applicant has queried the Council's assessment of daylight and sunlight, the Council's reasons have been substantiated with reference to local policy, relate to the planning merits of the proposal, and reach a reasonable conclusion that I agree with. The Council did not display unreasonable behaviour in its assessment of these issues.
7. The Council did not initially provide the Flood Risk Assessment for the proposal to the Environment Agency. However, the current proposal was not refused on the grounds of flood risk, such that this did not lead to wasted appeal expenses. In addition, while the applicant expresses dissatisfaction that the Flood Risk Assessment was uploaded to the public domain, this appears to have been standard practice such that this did not amount to unreasonable behaviour. While I also note that additional properties were consulted on the proposal, as no objections were received this too did not lead to wasted expense at the appeal stage.
8. The applicant has provided significant further information and allegations of unreasonable behaviour on the part of the Council in relation to the earlier applications at the site. While these comments are acknowledged, the issues raised do not directly relate to the application that is the subject of the current appeal and as such have not met the test of being unreasonable behaviour that has resulted in unnecessary or wasted expense at the current appeal stage.
9. Overall, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance has not been demonstrated, and an award of costs is not justified.

C Rafferty

INSPECTOR