



Costs Decision

Site visit made on 18 July 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2023

Costs application in relation to Appeal Ref: APP/E5330/W/22/3304828 Woodlands Heights, Vanbrugh Hill, Blackheath SE3 7EL

- 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 Gutstein of Triplerose Ltd for a partial award of costs against Royal Borough of Greenwich.
 - The appeal was against the refusal of planning permission for development described as 'Proposed extension to existing 5-storey building to provide an additional floor of residential floorspace comprising of 2 x 1 bedroom and 6 x 2 bedroom flats, with two roof terraces. (This application may affect the setting of the Westcombe Park and Greenwich Park Conservation Areas). (Re-consultation, Amended Description).'
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

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 is seeking a partial award of costs on substantive grounds in relation to the Council's reasons for refusal 2, 3 and 4.
4. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Paragraph 49¹ of the PPG sets out examples of these. The applicant considers those relevant here are preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The PPG advises that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. In this regard, the applicant advised he took part in a pre-application discussion and was invited to submit the application. The scheme was amended during the application process to address officer concerns. It was subsequently recommended for approval by

¹ Paragraph: 049 Reference ID: 16-049-20140306

- professional officers to the Greenwich Area Planning Committee (the Committee).
6. Elected Members are not duty bound to follow the advice of their professional officers. The Members did not agree with the recommendation and came to a different conclusion in terms of the acceptability of the scheme. The fact that pre-application advice was sought and followed and a scheme recommended does not render the Council's behaviour unreasonable. However, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
 7. The applicant asserts that the Council had a closed mind to the scheme because of comments made by the Chair of the Committee before the debate had commenced. I have been provided with verbatim extracts of those comments although I do not have the entire transcription of the Committee meeting. The Chair's comments include that there are 16 to 20 reasons to reject the scheme and that this is the highest score they have seen in their tenure as Chair of the Planning Board and committees. It also refers to the development as 'greedy', stating that 'this is not playing to the gallery for the May Elections' because he has chosen not to stand. The Chair then goes on to invite comments.
 8. I have some sympathy with the applicant in this regard as these comments do not appear to be objectively made and could be interpreted as prejudicial. Nevertheless, the decision was not for the Chair alone and was made by the Committee and there is nothing before me to suggest that these views were shared by other Members of the Committee.
 9. The Committee determined the application at their meeting on 8 February 2022. It is evident that the Members took their time to consider the scheme, including undertaking a site visit as they deferred the scheme from an earlier meeting in order for this to happen. This does not suggest to me that Members of the committee had a closed mind to the scheme.
 10. I am told that there were detailed deliberations at the meeting. However, I have not been provided with a copy of the Committee minutes, just the record of decisions, I am therefore unable to establish the extent of discussions and consideration of this proposal by the Committee.
 11. I have been referred to a costs decision² where an Inspector rejected a costs application in similar circumstances because it was evident that there had been detailed deliberations about the scheme. I am unable to categorically say that occurred here as I have not been provided with that evidence. This costs decision does not lead me to a conclusion either way in respect of the application before me.
 12. At the committee meeting, Members were made fully aware of the implications of the Council's lack of five year housing land supply and the need to apply the tilted balance under paragraph 11 of the National Planning Policy Framework (the Framework). They were informed of the need to consider if the harm was significantly or demonstrably so bad as to outweigh the benefits of granting

² APP/E5330/W/189/3202586 – Ground Floor Unit, Ballast Quay, Anchor Iron Wharf, Greenwich

- planning permission. I am satisfied that members made their decision in full knowledge of the requirement upon them.
13. The Council, in its statement of case, set out that the tilted balance should be set aside in this case based on unit numbers, despite having a significant shortfall in housing supply. This was made on the basis it considered housing land supply policies as being not the most important for determining the application under paragraph 11 d) of the Framework.
 14. I have disagreed with this approach. I also find this somewhat inconsistent with the advice given by officers to Members at the Committee. In any event, Members did apply the tilted balance, as recorded in the record of decisions of the Committee. Furthermore, in its statement of case the Council did also apply the tilted balance as an alternative approach, concluding that the benefits of the proposal did not outweigh the harms. I therefore find that the Council has not behaved unreasonably in this regard.
 15. There is no evidence before me to suggest that the Chair's subsequent role as a political lobbyist working on behalf of developers has affected the outcome of this appeal.
 16. The applicant sought to engage with the Council following the refusal to address its concerns. This included the submission of a transport note with swept path analysis and a draft management plan for the communal space to be secured by condition submitted prior to lodging the appeal and the submission of a draft Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 (as amended) (the UU). These sought to narrow the matters in dispute.
 17. The *Procedural Guide: Planning appeals – England*³ does not obligate the Council to engage with appellants to narrow the matters in dispute. The PPG does however recognise that unreasonable behaviours can be demonstrated if a local planning authority could take a more helpful approach in narrowing the issues to be considered at appeal.
 18. The Council does not have unlimited resources to respond to material informally submitted to it once an application has been determined. It was not unreasonable of the Council to advise the applicant to seek pre-application advice where material changes to the proposal were being made.
 19. Notwithstanding this, the Council nevertheless went on to consider the technical information and reports submitted by the applicant. This is evident in the Council's statement as there is commentary included within it on these reports. Furthermore, on the basis of these submissions, the Council partially conceded its second reason for refusal in respect of the loss of sunlight and overshadowing. However, the submission of technical information does not inevitably mean that a reason is addressed, particularly if, as occurred here, the Council does not agree with aspects of that information. In this case, the Council had some concerns about the methodology, the findings and the proposed mitigation. It therefore accepted that some, but not all, of the technical information addressed its concerns. The Council's behaviour in this respect was not unreasonable.

³ Updated 13 September 2023

20. It will be seen from my decision that I have agreed with the Council in part in respect of the harm to living conditions that would arise. I have also found it appropriate for a condition to be imposed in respect of mitigation for overlooking, but not in respect of the control of use of the terrace. The fact that my conclusions have differed from the Council's in some respects comes down to planning judgment. I have not found the Council's reasoning to be vague or based on a generalised assertion. I do not find the Council's behaviour unreasonable in this regard.
21. Turning to the Council's fourth reason for refusal in respect of highway related concerns. This related to two issues, one being car-free housing and the other in respect of the movement of delivery / servicing vehicles. The Council, in contesting the appeal, upholds both of these grounds for refusal.
22. The Council did not adopt the approach of conditioning the requirement for car free housing as it has done previously and as it set out in its recommendation to the Committee. Given this, the Council's behaviour was unreasonable as this evidently could have been dealt with by a suitably worded planning condition. Consequently, the applicant had to prepare a UU to address this matter which could have been avoided. I find that the applicant has been put to unnecessary and wasted expense in the appeal process in relation to this matter.
23. There was also no requirement for a Statement of Common Ground to be submitted as the appeal proceeded by way of the written representations process. There was therefore nothing unreasonable in the Council's behaviour in not agreeing to a draft or considering it further.
24. The applicant considers that the Council failed to recognise other benefits of the scheme such as the improvement in accessibility around the building and site. However, the Council had concerns about accessibility within the site, particularly given the intensification of the sub-standard shared site access and limited space within the site to accommodate multiple delivery vehicles. I have agreed with this finding. It was therefore not unreasonable of the Council to take the approach it did.
25. The Council has not referred to any specific guidance in the Mayor's Housing Supplementary Planning Document 2016. The applicant considers it should have done so given it raised concerns about privacy within its reason for refusal. However, I have not been guided to a specific standard within this document. The Council has set out why it considers there would be harm in this regard. I have concluded this harm would arise although I considered it could be mitigated. This does not mean the Council has behaved unreasonably in coming to the view it did.
26. The applicant asserts that the Council went beyond reasons for refusal 1 and 4 in its statement of case. This related to harm to the visual amenities of properties in surrounding streets and harm in respect of transport matters. The applicant addressed these in his rebuttal evidence. Whilst I note this point, these harms were identified by interested parties and, notwithstanding the reasons for refusal, would have been matters I would have had to address in the event I were allowing the appeal. Consequently, whilst I find the applicant may have incurred some additional work in responding to these matters, this was not wasted or unnecessary. This does not therefore justify an award of costs against the Council.

27. In conclusion, I do not find that the Council's reasons for refusal are not well founded. I have agreed with some of those, notably in respect of some of the effects on living conditions of nearby occupiers and concerns about the shared space and the intensification of the use of an already substandard access, but not others.
28. With the exception of the Council's approach to the car-free housing element, it therefore follows that I do not find that the Council has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failed to produce evidence to substantiate each reason for refusal on appeal; and made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
29. In respect of the provision of car-free housing, I have found that the applicant has been put to additional expense in preparing a UU which could have been avoided had this aspect of the scheme been conditioned.
30. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

31. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Royal Borough of Greenwich shall pay to Mr Gutstein of Triplerose Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting part of the fourth reason for refusal.
32. The applicant is now invited to submit to the Royal Borough of Greenwich, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Rachael Pipkin

INSPECTOR