



Costs Decision

Site visit made on 8 August 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2023

Costs application in relation to Appeal Ref: APP/C5690/W/22/3313722 Flat rear of 242 Brownhill Road, Lewisham, London SE6 1AU

- 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 Terence Reeves for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against the refusal of planning permission for the demolition of existing building and erection of new building to provide one 2-bed live/work unit.
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Decision

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

Reasons

2. 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. Parties in planning appeals normally meet their own expenses. However, 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.
3. The applicant is seeking a full award of costs on both procedural and substantive grounds. In relation to procedural matters, the appellant raises concerns about the processing of the application, including the Council not undertaking a site visit prior to determination of the application. In their response, the Council accepts that they did not undertake a site visit before determining the application. They also accept that a standard paragraph was included with the Officer Report, which they state formed part of their standard template at the time and was introduced to reflect changes in procedure the Council adopted to reflect the restrictions in place as a result of the Covid-19 pandemic. I have not been provided with any details of the Council's procedures in this regard. However, it is clear that whilst restrictions had been lifted at the time of the application being submitted, no site visit was undertaken. Having had the opportunity to visit the site, whilst I do agree that a visit to the site to appreciate its surroundings is beneficial, given the long and complex planning history relating to the site, this is ultimately a matter for the Council, and it has not affected my decision on this appeal. On this basis, I find that the Council has not acted unreasonably.
4. The appellant also raises concerns about the Council's consideration of two previous appeal decisions on the site, stating that the Council entirely disregarded the findings of the Inspectors in two previous appeal decisions, even though the appellant considers that there are a number of similarities

between these schemes and the current proposal. However, it is clear from the Officer Report that the Council had regard to the complex planning history of the site, including these appeal decisions. In particular, they make reference to one of the appeal decisions and a requirement for marketing evidence which had been addressed. Whilst the Council has not gone into significant detail comparing the schemes, I am satisfied that they had regard to these decisions as material considerations in the determining the application. As a material consideration, it is a matter of planning judgement for the decision maker to decide how much or little weight is attributed to the findings of these decisions. Each application is to be considered on its own individual merits and therefore I find that the Council has not acted unreasonably in this regard.

5. The appellant states that current use of the building was not given proper consideration. However, at the time the application was determined, a Lawful Development Certificate (LDC) had been refused on the basis of insufficient evidence. Therefore, whilst a further application for a LDC had been submitted, it had not been determined. A LDC was issued by the Council on 16 August 2022 and establishes the current lawful use of the premises, and the Council have addressed this in their Appeal Statement. Whilst there has been a clear change in the planning position on the site since the original determination of the application, the Council determined the application based on the established lawful use of the appeal site at the time. Therefore, the Council, did not behave unreasonably in reaching the conclusions it did on this aspect of the proposed development.
6. In relation to substantive grounds, it is clear that there are a number of areas of dispute which relate to matters of planning judgement, including whether the site is 'backland', the effect of the proposal on the character and appearance of the area or the living conditions of neighbouring occupiers. I recognise that the Council and the Appellant have reached different conclusions based on the evidence before them, and each party has provided some assessment on how these conclusions have been reached. Such disputes are common when applications are refused and there is often a difference of opinion on issues such as these. Whilst I have not necessarily reached all of the same conclusions as the Council, these are matters of planning judgement. I therefore find that the Council has not acted unreasonably.
7. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

K Lancaster

INSPECTOR