



Costs Decision

Hearing held on 27 September 2023

Site visit made on 27 September 2023

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th October 2023

Costs application in relation to Appeal Ref: APP/N5660/W/23/3324312 3 Highland Road, London SE19 1DW

- 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 Highland Residential Limited for a full award of costs against the Council of the London Borough of Lambeth.
- The appeal was against the refusal of planning permission for *erection of a part 3 and part 6 storey building (plus lower ground floor) comprising 20 residential units (Use Class C3); provision of associated car and cycle parking, refuse and recycling storage, new landscaping, amenity areas and children's play space (following demolition of existing buildings).*

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 (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. The aims of the costs regime include encouraging all those involved in the appeal process to behave in a reasonable way and to encourage local planning authorities to properly exercise their development management responsibilities¹.
3. The applicant argued that the Council had behaved unreasonably, first by mounting a case that was inconsistent with the pre-application advice that it had given and, second, by not following the approach of a recent appeal decision in respect of the weight to be given to economic benefits.
4. The PPG states that, where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs². The nub of the case mounted by the Council at the appeal was that the scale of the northern wing of the proposed flats would be excessive, with harmful consequences for the setting of heritage assets and the character and appearance of the area generally. The Council gave cogent evidence at the Hearing in support of that case. For the reasons set out in my appeal decision, I have come to the same decision as the Council on these matters. This in itself is a strong indication that the Council exercised its duty to determine the planning application in a reasonable manner. Nevertheless,

¹ PPG - Reference ID: 16-028-20140306

² PPG - Reference ID: 16-050-20140306

I have gone on to consider whether any aspect of the Council's behaviour might be considered to have been unreasonable.

5. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, the PPG states that behaviour at the time of the planning application can be taken into account³. Refusing to enter into pre-application discussions, when a more helpful approach would probably have resulted in the appeal being avoided, is one of the examples of unreasonable behaviour by a local planning authority given in the PPG⁴. In this case the Council did give pre-application advice. The advice was clearly set out in some detail and I have no doubt that it was intended to be helpful. The nub of the appellant's complaint is that it considers that the scale and massing of the proposal was "*settled*" by the pre-application advice.
6. A fair reading of the pre-application advice would lead one to believe that the Council's officers did not identify a concern with scale and massing at that time, on the basis of the information that was then available. However, it does not follow that the Council was bound by that advice when an application was received. On the contrary, the Council had a duty to consider all of the planning merits in the light of all of the information that emerged during the planning process, including further visual material and the results of consultations on the application. Assessing the scale and massing of a proposal such as this, in a sensitive location close to heritage assets, is not a simple matter. It requires the exercise of planning judgement in relation to a range of factors.
7. My overall assessment is that the Council gave pre-application advice, subject to the usual pre-application caveats, in a considered and professional way. It was not debarred from revisiting the question of scale and massing when the application was submitted.
8. The weight to be attached to public benefits, such as economic benefits, will normally be a matter of planning judgement for the decision maker. Such judgements will inevitably depend on the facts of the case. In my appeal decision, I have commented that the appeal at Brixton Hill Place, which is relied on in the costs application⁵, has very little relevance to this appeal.
9. I conclude that the Council has not behaved unreasonably. The conditions for an award of costs have not been met.

David Prentis

Inspector

³ PPG - Reference ID: 16-033-20140306

⁴ PPG - Reference ID: 16-049-20140306

⁵ Appeal Ref: APP/N5660/W/23/3317382