
Costs Decision

Site visit made on 18 September 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th November 2023

Costs application in relation to Appeal Ref: APP/Z5060/W/23/3320273 93-99 New Road, Dagenham RM10 9NL

- 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 Cloister Properties Plc for a full award of costs against the Council of the London Borough of Barking and Dagenham.
 - The appeal was against the refusal of the Council to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for change of use of the ground floor from commercial to 4 1xbed flats (Class C3).
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Decision

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

Reasons

2. The Planning Practice Guidance 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 states that the Council's assessment was limited to prescribed issues, one of which was whether the development would enjoy sufficient levels of natural light. The Council refused to grant prior approval on this matter, and I have also dismissed the appeal on this matter, albeit for different reasons.
4. Had the proposed change of use been demonstrated to provide adequate natural light to all habitable rooms without the requirement for any building operations, then prior approval should have been granted. I agree that how future occupiers of a proposed development choose to dress their windows internally, in order to improve their privacy, is not development and is not a matter for consideration as part of the planning process.
5. However, given that the proposal is reliant upon building operations to make it acceptable, which fall outside of the scope of Class MA, and which cannot in my view be secured by conditions, the refusal to grant prior approval for the development on the grounds that it would fail to provide adequate natural light was not unreasonable.
6. The applicant claims that the Council's vague and generalised assertions have not been substantiated and have therefore unreasonably held up the development. However, as I have found that the proposal did not comply with the relevant criteria anyway, it would not have benefited from the deemed consent provided by the GPDO.

7. Moreover, it has not been demonstrated within the costs claim how this behaviour has resulted in unnecessary or wasted expense for the applicant in relation to the appeal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

R Bartlett

INSPECTOR