



Costs Decision

Site visit made on 3 October 2023

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2023

Costs application in relation to Appeal Ref: APP/T5150/W/23/3317504 19 Christchurch Avenue, Brent, London NW6 7QP

- 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 Avenue NW6 Ltd for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of planning permission for the conversion of existing outbuilding at the rear of 19 Christchurch Avenue into a self contained 3 bedroom C3 residential dwelling.
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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. Unreasonable behaviour can be either be substantive or procedural in nature.
3. The applicant contends that the Council have behaved unreasonably on substantive grounds in respect of its interpretation of development plan policy; a misrepresented the separation distances between the proposed development and nearby properties; and its failure to substantiate its third reason for refusal relating to trees. The case of unreasonableness is also made on the basis that the Council have not been consistent in its determination of similar cases. On a procedural basis, the applicant also considers the Council behaved unreasonably in failing to undertake a site visit and not determining the planning application within the prescribed time limits.
4. The Council has in my judgement, clearly substantiated their reasons for refusal of planning permission and as will be seen from my decision letter, showed that it had a reasonable basis for its stance.
5. The reasons for the refusal were set out in the decision notice and clearly state which policies of the Brent Local Plan 2019-2041 (2022) (Local Plan) the proposal would conflict. The overarching thrust of the separation distances within the Brent Design Guide Supplementary Planning Document SPD1 (2018) (SPD1) relate to good design and ensuring satisfactory living conditions, are consistent with Policy DMP1 of the Brent Local Plan and the National Planning Policy Framework. The applicant has drawn my attention to an Appeal decision relating to 157-157a Ecclesbourne Road¹, however, I have not been provided

¹ APP/L5240/W/21/3274856

with the full details of the case. Nevertheless, I consider the guidance within SPD1 is a material planning consideration that the Council were entitled to refer to as part of its assessment of the proposed development.

6. There is a TPO tree on the appeal site and a number of other trees in the vicinity. The Council's requirement for further information in request of trees was in my judgement consistent with the development plan policy and the need to establish the proposals impact on trees. Given that any potential impact on trees, including those adjoining the appeal site would need to be fully assessed, I do not agree that the matter could have been satisfactorily dealt with by condition, as suggested by the appellant. The applicant has drawn my attention to Appeal Decision APP/T5150/W/22/3299035, in which the Inspector considered that a tree survey could be subject to a pre-commencement condition. As I have not been provided with the full details, it is unclear if the circumstances are directly comparable. I am therefore satisfied that the Council had substantiated its concern and justified its stance in relation to trees.
7. The applicant states that the Council failed to take into consideration similar cases on neighbouring plots. The Council's Officer Report has identified differences in the site-specific circumstances in those examples and the appeal site. I therefore do not agree that the Council have shown unreasonable behaviour in terms of obvious inconsistencies in its decision making on other schemes.
8. It is clear that the planning application process went beyond the prescribed 8-week time frame. It was open to the applicant to pursue an appeal following the expiry of the statutory period on the basis of non-determination. The applicant however chose to wait for the Council to determine the application, which it ultimately did. While I recognise delays in receiving a decision on the application would have been frustrating, I do not consider the Council behaved unreasonably in this regard.
9. Although the Council were correct in some of their measurements, they did not accurately convey the distance between the upper floors of No 19 and the appeal building. An in-person site visit is not always necessary, and I note the Council made an assessment with the aid of aerial imagery and historic photographs. However, in this instance, the lack of in-person visit to assess the development proposal seems likely to have perpetuated the inaccuracies between the proposed dwelling and neighbouring properties separation distances, which is unreasonable.
10. For an award of costs to be made the unreasonable behaviour on the part of the Council must have caused the applicant to incur unnecessary or wasted expense in the appeal process. However, the unreasonable behaviour of the Council did not indicate that the proposal should be allowed, nor that a reasoned judgement should be made other than on the basis of the development plan and the site specific circumstances. Any costs incurred by the applicant in relation to defending its position during the appeal process would therefore have still been incurred. Having regard to the facts and circumstances of the case, I do not consider that the unreasonable behaviour of the Council has led to unnecessary expense.

11. I therefore find that unreasonable behaviour resulting in unnecessary of wasted expense, as described in the PPG, has not been demonstrated. The application of an award of costs is refused.

L Clark

INSPECTOR