



Costs Decision

Hearing (Virtual) held on 13 December 2023

Site visit made on 14 December 2023

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2024

Costs application in relation to Appeal Ref: APP/T5720/W/23/3322144 81 Wimbledon Hill Road, Wimbledon, Merton, London SW19 7QS

- 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 Charterfield Homes Limited for a full award of costs against London Borough of Merton.
 - The appeal was against the refusal of planning permission for demolition of existing building and erection of a five storey residential block comprising 18 x self contained flats (1 no x 3 Bed, 15 no x 2 Beds & 2 no x 1 Beds), plus 1 no dwellinghouse arranged over 2 floors (ground floor and basement).
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Decision

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

The submissions for Charterfield Homes Limited

2. The costs application and final comments were submitted in writing.

The response by London Borough of Merton

3. The response was made in writing.

Reasons

4. 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.
5. The substantive points in the appellant's case are that the Council made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and consequently 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. With regard to the fact that the Council did not obtain expert daylight and sunlight advice, concluded differently to its own viability advice and did not undertake a planning balance.
6. At the time of the decision the Council had the Daylight, Sunlight and Overshadowing Study from Base Energy in support of the proposed development as well as the representation from Right Of Light Consulting objecting to the development. Consequently, there was conflicting detailed professional evidence before the Council at the time it made its decision. Therefore, the decision to refuse the application on daylight and sunlight

grounds was supported by an objective analysis, and there is no need for this to be a professional report commissioned by the Council.

7. The main decision comes to the same decision as the Council with regards to daylight, sunlight and overbearing. As such, even considering that the BRE guidelines must be considered flexibly and the reservations about the use of a CGI image from a single unverified viewpoint, this is not development that should clearly be permitted. The first reason for refusal specifically mentions the 'height, massing, bulk, design and siting' with regard to the harm to living conditions and character and appearance. This is suitably specific.
8. In terms of viability the Council did not dispute whether the development could viably provide affordable housing at present. The reason for refusal relates to whether an early and late stage review mechanism had been secured and whether the development could generate affordable housing provision in the future. Consequently, the wording in the decision notice is not unreasonable. During the appeal process a S106 has been submitted which the main parties agreed resolved this matter, however this was not before the Council at the time that it made its decision.
9. The officers' report is clear about the amount of housing that would be provided and sets out a summary of the benefits of the development in the conclusion. I am therefore satisfied that, although this was not specifically discussed in the committee transcript, the information was before committee members when they made their decision to enable them to undertake a planning balance. Furthermore, it can be seen in the main decision that even with a paragraph 11d balance undertaken, this would not have altered the decision taken. As such the appeal scheme was not development which should clearly be permitted and the appeal would be necessary in any case.
10. Reference is made to part of the planning committee discussion where the appellant was asked whether they would withdraw the previous appeal proposal at this site. It is not unreasonable for a subsequent application on the same site to be considered whilst there is also an undecided appeal and these comments were unhelpful. However, the main decision finds harm regarding neighbouring living conditions. This would be the case, whether or not the previous appeal were withdrawn, and the application should still have been refused for this reason. Therefore, this appeal would still be necessary. Consequently, this has not led to wasted expense in the appeal process.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

H Miles

INSPECTOR