



Costs Decision

Site visit made on 29 September 2023

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th February 2024

Costs application in relation to Appeal Ref: APP/C5690/W/23/3319232 3 St Germans Road, Lewisham, London SE23 1RH

- 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 Vincent Walsh of Urban R+D 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 development described as "It is proposed to develop 2 family homes on land to the rear of Bradgate House, 3 St German's Road, SE23 1RH to include works to the forecourt of the host property, the creation of bin storage facilities to the front and an access route to the side of the property".
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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.
3. The applicant's claim in respect of the first reason for refusal listed in the Council's decision notice is that it is based on a vague, generalised and inaccurate assertion about a proposal's impact, which is unsupported by objective analysis. The Council counters this claim by referring to the policy context against which it was assessed.
4. Although I have ultimately disagreed with the Council's assessment in respect of this issue, I can understand how this conclusion was reached. The key factor in respect of this issue is whether or not the site is considered to be in a perimeter form residential typology. For the reasons outlined in my appeal decision, I did not consider it to be of a perimeter form typology. However, to my mind, some sites will display certain characteristics that may or may not conform to the perimeter form typology, with the appeal site being one such example. I am therefore of the view that this was a matter of planning judgement, and the Council was entitled to arrive at the conclusion it did. I therefore find no unreasonable behaviour in respect of the first reason for refusal.
5. The applicant's claims in respect of the second and third reasons for refusal are centred on the Council's decision to refuse planning permission based on details that were not a quoted validation requirement and were not

- subsequently requested during the determination period. The applicant considers that, had these details been requested, the issues could have been overcome and the appeal could have either been avoided, or the scope of issues to be considered could have been narrowed.
6. The Council's response in respect of these issues refers to advice given on its website which advises, summarily, that if proposals are contrary to policy and it is unlikely that negotiations could overcome this, the application will progress to determination without further negotiations. The Council followed this approach based on its view that the first reason for refusal could not be overcome.
 7. As discussed in the appeal decision, additional details were submitted with the appeal to clarify some of the matters arising in the second reason for refusal. These details did not alter the proposed development and served only to provide clarification. As such, I am of the view that the issues relating to floorspace and ceiling heights could have been overcome in a relatively simple manner if they had been requested during the determination period.
 8. Nevertheless, I am not persuaded that even if these issues had been overcome during the determination period, that the scope of issues relevant to the appeal would have been significantly narrowed. Whilst the appeal has also sought to clarify the issue relating to daylight and sunlight, no supplementary details relating to noise were provided. In any event, these are subjective issues that are determined as matters of planning judgement.
 9. The Council does not dispute that the parking surveys noted in the third reason for refusal were not a validation requirement. However, it felt they were necessary once the specific considerations of the appeal proposal came to light, and for the reasons given previously, it did not feel negotiation was necessary because the first reason for refusal could not be overcome.
 10. I note the applicant engaged in 'concept' pre-application discussions with the Council, with the only matter for consideration being the principle of development. The pre-application response refers to other potential considerations, including transport and servicing issues, but is clear these issues are not considered in detail.
 11. Due to the 'concept' nature of the pre-application discussions, it does not appear that the Council's views on these matters of detail were sought. As such, although these details ultimately became key issues in the determination of the planning application, the Council determined the application based on the submitted details. Although these details provided examples of similar nearby developments that had been found acceptable, I am not of the view that these examples would be determinative factors to the planning application. In any event, the Council is required to determine each planning application on its own merits. Whilst I have reached a different conclusion to the Council on this issue, the Council adequately substantiated its reasons for refusal, and I do not consider it behaved unreasonably in reaching its conclusions.
 12. Paragraph 049 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably, with examples of unreasonable behaviour including the Council's refusal to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being

avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal. Other examples include failing to produce evidence to substantiate each reason for refusal on appeal, or vague, generalised or inaccurate assertions about a proposal's impact. Given the background, including the Council's pre-application response, I do not consider the Council's behaviour was unreasonable in this context.

13. Although I have ultimately disagreed with the Council's decision, I am satisfied that the reasons for refusal were appropriately substantiated and none of the criteria amounting to unreasonable behaviour as set out in the PPG have been met.

Conclusion

14. Based on the information before me, I find no unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated, as set out in the PPG. The application for an award of costs is therefore refused.

P Storey

INSPECTOR