



Costs Decision

Site visit made on 2 July 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2024

Costs application in relation to Appeal Ref: APP/Q5300/W/23/3332187 937 Green Lanes, London N21 2PB

- 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 George Karaolis, MHK Alpha Ltd for a full award of costs against the Council of the London Borough of Enfield.
- The appeal was against the refusal of planning permission for a proposal described as 'convert this run down vacant ex nursing home into 3 flats, Flat 1 - 3 Bedroom 3 bathroom on the ground floor. Flat 2 - 3 Bedroom 3 bathroom on the first floor. Flat 3 - 1 bedroom 1 bathroom in the loft. The proposed building work is to build a first floor extension to the rear and rebuild the loft space and roof has collapsed'.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('the 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. It explains that awards against a local planning authority may be either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
3. The appeal in this case relates to an application that was made following a previous refusal¹ ('the Previous Application'). The applicant indicates that the Council did not determine the Previous Application until some 8 months after it had been submitted. They refer to a lack of communication and positive engagement from the Council during that time, and state that advice given by Council officers was inconsistent, with a change in view on the acceptability of the proposed roof from that expressed initially leading to a new reason for refusal. However, while I appreciate that the applicant may have felt frustrated by the Council's handling of the Previous Application, costs can only be awarded in relation to unnecessary or wasted expense in the appeal process. Even if I were to find that the Council had behaved unreasonably in the administration or determination of the Previous Application, the evidence before me does not demonstrate that this behaviour has caused unnecessary or wasted expense in the current appeal.
4. The applicant also argues that the Council did not give due consideration to the merits of the appeal application which had been amended from the earlier scheme. However, two reasons for refusal of the Previous Application were not

¹ Application ref 22/03837/FUL

carried forward to the decision on the appeal application in light of the amendments that had been made. The Council's officer report also references the applicant's arguments in respect of other gable end and crown roof alterations in the local area and explains why these were not considered to justify the proposal. This assessment reflects matters of planning judgement and while the Council did not agree with the applicant, that does not mean it had not considered their case. As I have noted in my appeal decision, it is also unclear from the evidence before me that the example developments referred to by the applicant are directly comparable to the appeal scheme such that the case should have been determined in a like manner to them. I acknowledge that the conclusion section of the Council's officer report is not entirely consistent with the findings of the preceding assessment sections. Overall though, I am satisfied that the Council did give proper consideration to the material that was before it and that its officer report and reason for refusal adequately substantiate its reason for refusal.

5. The applicant asserts that the Planning Officer refused to discuss the proposal and there were no replies to emails, but the Council has provided a copy of an email from the applicant which appears to refer to a phone call indicating there was at least some discussion. While the Council may not have given the applicant an opportunity to amend the scheme in response to its concerns, I am not persuaded that it was in itself unreasonable for the Council to consider that it would not be possible to address the objections through amendments within the scope of the application.
6. Furthermore, while I do not share the strength of the Council's concerns about the proposed gable end, I have ultimately found that the proposal taken as a whole would cause unacceptable harm to the character and appearance of the appeal building and area and that this harm would not be outweighed by other considerations. Accordingly, this is not a case where I find that development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations has been unreasonably delayed or prevented.
7. That said, delay in providing information and only supplying relevant information at appeal stage when it was previously requested, but not provided, at application stage are examples of unreasonable behaviour given within the PPG. The applicant has provided an email indicating that the officer report on the application was requested from the Council shortly after the application was determined, but they advise that it was not provided. I further note that the report was not uploaded to the Council's website until after the appeal had been started. Not having access to the report did not prevent the applicant from making the appeal, but it did mean that they had to make the appeal without full knowledge of the Council's concerns. In the interests of fairness, it was also then necessary to allow the applicant an opportunity to comment on the content of the officer report as new information in the appeal process. This step would not have been necessary had the applicant been able to address matters at the same time and as part of their appeal submission case, and resulted in the appeal timetable being extended.
8. The Council accepts that it was regrettable that the officer report had not been uploaded and has put forward no extenuating circumstances or other explanation for its failure to provide the officer report in a timely fashion. I consider in this case that the failure to publish or provide the officer report to

the applicant on request was unreasonable. Furthermore, the unreasonable behaviour by the Council has directly caused the applicant unnecessary and wasted incremental expense in the appeal process in reviewing the information in the officer report against the evidence already submitted and providing a response to it at a late stage.

9. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense as described in the PPG has occurred in respect of the failure to provide the officer report promptly, and a partial award of costs is therefore warranted.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Enfield shall pay to Mr George Karaolis, MHK Alpha Ltd the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in connection with reviewing and responding to the Council's officer report; such costs to be assessed in the Senior Courts Cost Office if not agreed.
11. The applicant is now invited to submit to the Council of the London Borough of Enfield, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Bowyer

INSPECTOR