



Costs Decision

Site visit made on 2 July 2024

by C Skelly BA (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Costs application in relation to Appeal Ref: APP/Y5420/W/24/3339635 41 Whymark Avenue, Wood Green, Haringey London N22 6DJ

- 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 S&J property Investing Partners Ltd for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal of planning permission for change of use from Class C3 Dwelling House to C4 House of Multiple Occupancy: 4 bedrooms for up to a maximum of 6 people.
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Decision

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

Reasons

2. 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.
3. Unreasonable behaviour on the part of a local planning authority may include it making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, preventing or delaying development which should clearly be permitted, having regards to its accordance with the development plan, national policy and any other material considerations, and not determining similar cases in a consistent manner.
4. The applicant contends that the Council changed its mind on the size of the internal floorspace of the property between 2023 and 2024. Had the applicant been made aware of the restriction relating to size they state they would not have pursued the planning application or subsequent appeal. The applicant also believes that the Council misinterpreted their own data regarding housing needs in Haringey and that there is a conflict of interest between their own housing stock and that of the open market.
5. The Council responds that at the pre-application stage the applicant was considering a different scheme, which included the retention of a family sized unit and the submitted drawings confirmed that the internal floorspace was below 120sqm. The Council confirms that there is demand for family housing and therefore it has not misinterpreted its data on housing need. In relation to the conflict of interest the Council has determined the application in accordance with current planning policy.
6. I can see no evidence before me that the Council's information on the demand for family housing was incorrect or that there has been a conflict of interest.

7. The Council refused the planning application on two grounds, one of which related to the internal floorspace of the site and secondly the loss of family housing. The proposal was considered to conflict with Policy SP2 of the Haringey Local Plan and Policy DM17 of Haringey's Development Management Development Plan Document (2017) (DPD).
8. Based on the information before me, it does appear that there has been some inconsistency with the approach of the Council in terms of how it has addressed the floorspace issues throughout the process. The pre-application advice relating to a proposal for the conversion to flats, indicated that the floorspace met the policy requirement of Policy DM16 of the DPD, which is the same criterion as in Policy DM17 of the DPD. However, such advice at pre-application stage is without prejudice and was at that time, the Council say, based on approximate figures. While the same information appears to have been submitted subsequently with this proposal, the annotations to the plans which were submitted at the planning stage for the change of use to the House of Multiple Occupation (HMO) show that when the garden room is removed from the calculations that the original floorspace fell below the 120sqm policy requirements.
9. Based on this information and a strict application of the policy criteria, there is some justification for the Council's decision to refuse the proposal in this respect. Looking in isolation at that information, the Council's decision was understandable, albeit that there was some inconsistency from the previous advice. Nevertheless, based on its assessment at that time the decision should not be considered unreasonable. This element of the reason for refusal is clear and precise, and the Council provide sufficient commentary and information at the appeal stage to support its decision. The appeal therefore could not be avoided on this issue.
10. It will be seen from the appeal decision, that after considering all the information, I have come to the view that the balance falls in favour of the proposal on this matter. Nevertheless, this was not a straightforward matter considering what appears to be initial and updated floorspace figures and this reinforces my view that it was not unreasonable for the Council to have reached the decision it did at the planning application stage, with the information it had available.
11. The second reason for refusal concerned the loss of family housing. There is some support for the Council's view that a family house would be lost and it is acknowledged that the site lies within the Family Housing Protection Zone. The supporting text to Policy DM17 of the DPD makes reference to the issue being that HMOs lead to a reduction in smaller family housing. However, Policy DM17 of the DPD allows the conversion of larger homes to HMOs subject to the original floorspace meeting the size requirement. There is no direct policy criterion that references family housing, and once I had accepted the case that the size met the policy approach it follows, in my mind, that the conversion to a HMO, in that regard is acceptable. Therefore, there is a link between the two reasons for refusal. As the Council was not unreasonable in its decision to refuse the application on grounds of the original floorspace size it follows that I do not consider it was unreasonable in its approach concerning the loss of a family dwelling.

12. It seems to me that the appeal could not have been avoided and that the costs incurred at the appeal stage by the applicant were necessary to make the case. The PPG explains that costs can only be awarded in relation to unnecessary or wasted expense in the appeal process, although behaviour and actions at the time of the planning application can be taken into account. The actions of the Council at the appeal stage in refusing the proposal are reasonable and it is, in essence, the concerns with the inconsistency at the earlier stages which are the substantive issue. Consequently, while it would be hoped that there would be consistency throughout, in the circumstances of this case, for the reasons explained, I do not consider that the Council's actions meet the threshold to be considered unreasonable either at the planning application or appeal stages in respect of this specific proposal.
13. As a result, it follows that in terms of the issues raised by the applicant in the costs claim, I cannot agree that the Council has acted unreasonably and the appeal could not have been avoided. Accordingly, the applicant was not put to unnecessary or wasted expense in the appeal process.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

C Skelly

INSPECTOR