



Costs Decision

Site visit made on 20 August 2024

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 SEPTEMBER 2024

**Costs application in relation to Appeal Ref: APP/Z5060/W/24/3338837
27 David Road, Dagenham RM8 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 Mohamed Bharadia for a full award of costs against the Council of the London Borough of Barking & Dagenham.
 - The appeal was against the refusal of planning permission for the construction of a 1 bed 1 person dwelling.
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Decision

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

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. The appellant has submitted their claim on 4 grounds.
4. **First**, the delay in the submission of the Council's Questionnaire to the appellant. As specified in the timetable for the appeal, the Council's Questionnaire should have been copied to the appellant by 2 April 2024. However, the appellant was only provided with the Questionnaire and supporting documentation with the Council's statement of case on 29 April 2024. This is a procedural error on behalf of the Council, and the appellant has identified costs arising from this, including uncertainty as to the Council's intentions on the appeal and that they had to react accordingly given the next timetabled deadline.
5. The availability of documents on the Council's website does not justify the failure to provide these directly to the appellant as required.
6. The Council has questioned the appellant's assertion on the "*Commitment of time in the review of the LPA's s78 Questionnaire and accompanying documentation*". However, I consider that this relates to the overall claim for costs rather than specifically this ground. That said, the appellant would have had to assess the Questionnaire and supporting documentation in any event. Therefore, the award of costs should relate to those arising from the delay in providing the Questionnaire to the appellant, rather than the wider review of the Questionnaire and accompanying documentation.

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7. I conclude that the late submission of the Questionnaire to the appellant represents unreasonable behaviour on the Council's behalf due to a delay in providing information or other failure to adhere to deadlines. The appellant has identified unnecessary or wasted expense arising from that delay. An award of costs on this matter is therefore justified, limited only to the costs arising from the delay.
 8. **Second**, a failure to take into account material considerations in respect of the first 2 reasons for refusal and an inconsistency in decision making; as well as making assertions which are unsupported by objective analysis.
 9. The Council made its decision on the proposal on the basis of it being a 1-bedroom 2-person dwelling, although it now accepts that it should be assessed as a 1-person dwelling. The description of the development is clear that it relates to a 1-person dwelling.
 10. Although the Nationally Described Space Standards (NDSS) do not include a specification for a 1-person house (as opposed to a flat or bungalow), this matter was addressed by an Appeal Decision¹ in the Council's area which was referred to in the planning statement submitted with the application. Even given the uncertain wording of the NDSS, the Council should have assessed the proposal as being for a 1-person dwelling, and the failure to do so represents unreasonable behaviour. The appellant has been put to unnecessary expense in addressing this issue.
 11. That said, I have concluded that the proposal would result in a substandard extent of private external amenity space for residents of the existing dwelling. That would be the case regardless of whether the proposal was assessed as being for a 1-person dwelling. The Council's consideration of the level of occupation has therefore not led to an appeal which could otherwise have been avoided.
 12. The appellant refers to vague, generalised or inaccurate assertions made by the Council about the proposals impact which are unsupported by objective analysis. This appellant highlights a number of matters including the Council's consideration of character and appearance, the effect of nearby development including the Lymington Fields estate, other approvals in the area, and the assessment of the contribution to housing supply. However, I have agreed with the Council's concerns on these matters. Reference to evidence supporting the development of small sites, such as the Mayor of London's Plan Guidance documents, would not have led me to a different conclusion on these issues. I therefore do not conclude that the Council has behaved unreasonably on these matters.
 13. Drawing the above together, the Council's first and second reasons for refusal as a whole were not unreasonable, and any award of costs on this matter should be limited only to the unnecessary or wasted expense incurred by the appellant in addressing the level of occupation of the proposed dwelling.
 14. **Third**, errors of fact, inaccurate assertions and a confusing narrative in relation to the third reason for refusal. When assessing parking provision, the Council assessed the proposal as being for a 2-person dwelling, although it now accepts that was an error and the proposal should be assessed as a 1-person

¹ Appeal Ref: APP/Z5060/W/20/3260545 - 237 Grafton Road, Dagenham RM8 1QP

dwelling. I have previously concluded that this error represents unreasonable behaviour.

15. However, even as a 1-person dwelling the Council has concluded that an off-street parking space should be provided for the new dwelling and based on the submitted evidence I have agreed with that conclusion.
16. The appellant contends that there is no off-street parking for the existing house. However, the 'Existing Roof & Site Plan' submitted by the appellant shows a car parking space for the existing dwelling, and this parking space was in use at the time of my visit. I therefore cannot conclude that the Council has made errors of fact or inaccurate assertions in respect of the existing car parking space. Other than the matter of the occupancy of the proposed dwelling, the Council's narrative on this issue is also clear, and I have agreed with its concerns in dismissing the appeal.
17. I conclude that the Council's third reason for refusal as a whole was not unreasonable, and any award of costs should therefore be limited to unnecessary or wasted expense incurred by the appellant in addressing the number of occupants of the proposal.
18. **Fourth**, that the reason for refusal relating to cycle parking was a non-issue. Subsequent to its decision, the Council has accepted that this issue can be addressed by a planning condition. However, the submitted plans showed a cycle store which had no access to the highway other than through the proposed dwelling. Given the evidence on the submitted plan, it was not unreasonable for the Council to assess the scheme on that basis. The planning application and subsequent appeal have also been dismissed for other reasons, and it therefore cannot be concluded that a suitable condition in relation to cycle parking would enable the proposed development to go ahead. I therefore conclude that the Council has not behaved unreasonably on this matter.

Conclusion

19. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the late submission of the Council's Questionnaire and the assessment of the number of residents of the proposed dwelling. A partial award of costs is therefore warranted.

Costs Order

20. 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 Barking & Dagenham shall pay to Mr Mohamed Bharadia, the costs of the appeal proceedings described in the heading of this decision limited to those costs arising from the late submission of the Council's Questionnaire and the assessment of the number of residents of the proposed dwelling; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. The applicant is now invited to submit to the Council of the London Borough of Barking & Dagenham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Cross INSPECTOR