



Costs Decision

Site visit made on 31 July 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 October 2024

Costs application in relation to Appeal Ref: APP/X5210/W/24/3337445 9D The Grove, London N6 6JU

- 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 Nir Cohen for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against the refusal of planning permission for demolition of the existing dwelling and construction of a replacement dwelling with associated landscaping.
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Decision

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

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 PPG further specifies that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.
4. The applicant has submitted 5 specific grounds by which they consider the Council's unreasonable behaviour has incurred unnecessary or wasted expense in the appeal process, summarily relating to: the time taken for the Council to issue its decision; misinterpretation of the proposed design; the delayed feedback relating to the Basement Impact Assessment; by misapplying a reason for refusal relating to affordable housing; and by requesting additional obligations to be included in the legal agreement that did not form reasons for refusal. I shall address each ground in turn.

Ground 1 – Time taken to issue decision

5. The applicant highlights that the planning application was determined more than 3 years after it was validated. During this period, amendments were made to the proposal, and additional technical assessments were submitted. The applicant also claims that the Council made numerous promises, though the specifics of these promises are not detailed.

6. The Council asserts that the applicant was clearly informed at an early stage that the planning application would be refused. The Council attributes delays to challenges related to the pandemic, which affected working arrangements while the application was under consideration. However, it maintains that the applicant's agents were kept informed throughout the process. Additionally, staff workloads and prioritisation of other projects involving the applicant's agent are cited as contributing factors to delays on both sides.
7. Although the Council raised initial concerns with the proposal, the evidence indicates that both parties made efforts to resolve the issues. However, even if a decision had been made sooner, it appears likely that the outcome would have been the same, and an appeal would have been unavoidable. While the proposal went through multiple revisions over an extended period, and delays were evident, the evidence suggests that both parties contributed to these delays. I find no compelling evidence that the delays resulted from the Council's unreasonable behaviour, nor that the appeal could have been avoided.

Ground 2 – Design

8. In my accompanying appeal decision, I have made it clear that my decision is based on the plans listed in the decision notice, which both parties agree are accurate.
9. The Council's officer report contains inconsistencies, mentioning a pastiche design and a large arch feature, likely referring to earlier versions of the plans. The Council also acknowledges that an incorrect screenshot was included in the report. However, despite these errors, it appears that the proposal was assessed against the correct drawings, as those were the ones listed in the decision notice. As a result, I cannot determine to what extent these discrepancies affected the overall assessment. Furthermore, the applicant's own Design & Access Statement shows inconsistent elevational designs, indicating that errors were made by both parties. Consequently, I do not find sufficient evidence of unreasonable behaviour on these grounds.

Ground 3 – Basement Impact Assessment (BIA)

10. The applicant highlights that the Council's BIA consultants submitted their response to the Council in November 2020, but it was not forwarded to the applicant until October 2023. The Council admits that, due to an administrative error, disruption during the pandemic, and temporary staff changes, the response was not relayed to the applicant until later in the process.
11. The PPG notes that the delay in providing information may give rise to a procedural award of costs against a local planning authority. The BIA issue formed a reason for the refusal of planning permission, but this matter was resolved between the parties during the appeal process. It is highly likely that this could have been settled earlier, and need not have been a reason for refusal, had the Council communicated their consultant's response in a more timely manner.
12. In light of this, I find that the Council has behaved unreasonably in this instance, resulting in the applicant incurring unnecessary and wasted expense in the appeal process.

Ground 4 – Affordable housing

13. The PPG advises that the withdrawal of any reason for refusal may give rise to a procedural award of costs against a local planning authority.
14. The Council acknowledges in its statement of case that the reason for refusal on the grounds of affordable housing was included in error and it does not wish to contest this reason. However, the Council argues that this was an oversight rather than unreasonable behaviour.
15. Nevertheless, because this issue was formally cited as a reason for refusing planning permission, the applicant was required to address this issue in their appeal submission, thereby incurring additional unnecessary expense. I therefore find that the inclusion and subsequent withdrawal of this reason for refusal constitutes unreasonable behaviour by the Council.

Ground 5 – Legal agreement

16. The completed legal agreement submitted with the appeal includes an obligation pertaining to an Energy Efficiency and Renewable Energy Plan. Although the formal reasons for refusal do not refer to the absence of such a plan, the Council's officer report clearly states that an energy and sustainability plan would need to be secured through a legal agreement, the absence of which would form a reason for refusal.
17. For an award of costs to be justified, I must be satisfied that the Council has behaved unreasonably, and that this behaviour has directly caused the applicant to incur unnecessary or wasted expense in the appeal process.
18. While the Council acknowledges this should have been a formal reason for refusal, I am provided with limited substantive evidence that this issue was in dispute between the parties during the preparation of the completed legal agreement, or that it resulted in unnecessary or wasted expense during the appeal process. Therefore, I am not convinced that an award of costs is justified on this issue.

Conclusion

19. Based on the information before me, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has been demonstrated in relation to Grounds 3 and 4, as described above. Therefore, a partial award of costs is justified, limited to those costs incurred by the applicant in relation to these specific matters.

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 Camden shall pay Nir Cohen the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred in contesting those aspects of the applicant's case set out in my conclusion above.
21. The applicant is now invited to submit to the Council of the London Borough of Camden, 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 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.

P Storey

INSPECTOR