



Costs Decision

Hearing held on 17 September 2024

Site visit made on 18 September 2024

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Costs application in relation to Appeal Ref: APP/U5360/W/24/3344988 65 Nile Street, Hackney London N1 7RD

- 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 Mike Penn of Little Venice Developments Limited for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal of planning permission for the erection of a roof extension to create one additional storey, plus erection of a single storey rear extension and conversion of the property to create 4 self-contained dwellings comprising 2 x 1 bed, 1 x 2 bed and 1 x 3 bed units, including minor external alterations.
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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 (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. PPG provides examples of unreasonable behaviour by local planning authorities, including preventing or delaying development which should clearly be permitted.
4. The Council took considerable time to determine the application subject to this appeal. Costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, although behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. However, PPG is clear that costs cannot be claimed for the period during the determination of the planning application.
5. The delays would have undoubtedly been very frustrating for the applicant. Nevertheless, from the evidence before me, there is no indication that the Council would have granted permission had they made their decision sooner. Therefore, the appeal would not have been avoided.
6. In their appeal statement, the Council confirmed that the fallback scheme was a realistic possibility and a material consideration. Notwithstanding this, as the change in stance was only clear at that stage, the appellant had to undertake work to respond to the Council's different view on the fallback as set out in the decision notice and officer report as part of their own appeal statement. This

was unreasonable and would have resulted in costs being incurred by the appellant up to that point.

7. While I have allowed the appeal, I found the proposal would result in some harm and be contrary to the development plan as a whole. In reaching my finding there was a need to balance various factors. The weight given to those factors is a matter of judgement. Although I did not agree with the Council, they made a reasoned case for why they did not give the same weight to the relevant factors, including the fallback. This was even after confirming that the fallback was a material consideration. That I came to a different finding does not mean the Council were unreasonable in that regard.
8. Refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. On the issue of cycle storage, a condition has been imposed. Nonetheless, this was following amendments to the layout that was before the Council at the time of them making their decision. It was not unreasonable for the Council to want further details of what layouts would be feasible prior to determination.
9. Responses from consultees are a material consideration. Notwithstanding this, the Council are not bound to follow their consultees, and this includes any comments made at the Hearing. They have made a clear case as to the alleged harm in relation to cycle provision and for living conditions of future occupiers. These were subjective matters and that I have not reached the same finding as them on these points does not demonstrate unreasonableness.
10. Even if the lack of provision of consultation responses to the appellant promptly were unreasonable, I do not consider it has led to any additional costs as they did not necessarily reflect the overall views of the Council. This is also the case from any evolving comments on the nature of the concerns regarding cycle provision at the Hearing, the layout of which had evolved itself shortly before the Hearing, or lack of policy context for 50% accessible spaces.
11. I do not have full details of the scheme at 71 Nile Street. However, from my observations the appeal scheme is of a different design and the positioning of adjacent windows is different to some degree. Therefore, it is materially different to the appeal scheme and that a development at 71 Nile Street was permitted does not indicate unreasonableness or inconsistency of decision making by the Council.
12. The Council's stance on the application of paragraph 11d of the National Planning Policy Framework has been unclear at times. The officer report does not refer to the level of housing supply at that point or carry out any specific balance with regard to paragraph 11d of the Framework. There is no clear evidence that the Council would have granted permission had they carried out such a balance at the time of determining the application or at any point subsequent to that.
13. While not making direct reference to paragraph 11, 6.17 of the Council's appeal statement acknowledged that the 'tilted balance' was engaged. The Pre Hearing Response from the Council states that the 'presumption in favour of sustainable development is not engaged' and there were questions around this at the Hearing. Although there was an element of ambiguity in the Pre Hearing

Response in terms of the wording used, it has not been demonstrated that this has led to any additional costs being incurred.

14. At the Hearing it was clear that while pictures of the neighbouring property indicated particular uses for the adjacent rooms, this was not certain. That the Council were not sure of the use of the rooms is not unreasonable and proceeding on a pre-cautionary approach was appropriate. It has also not been shown that any uncertainty over this or the specific windows and what element of the extension was the concern has led to any additional costs for the appellant.
15. At the Hearing, the Council confirmed that several policies quoted in the decision notice were not relevant, or the scheme did not conflict with them (LP27, LP1, E1 and E2). From my notes of the Hearing, this includes Policy LP27 which relates to offices, and it was agreed by the main parties that the appeal site was not in such a use. In their appeal statement the Council had confirmed that Policy LP26 included on the decision notice, was in error and should have been LP28. The appellant would have needed to provide responses in relation to these policies and matters up to the points where it was clarified they were not relevant or being pursued. This was unreasonable and would have incurred costs.
16. The Council also stated at the Hearing that they did not wish to pursue the refusal reason relating to the future living conditions of the occupiers of unit RO1. Up to this point, the appellant would have needed to respond to this matter and incur costs related to that.
17. I have outlined in my decision why the REA is applicable in this instance and although a 30 degree angle point was raised regarding light by the Council, it is still of relevance for outlook which was also an issue the appellant had to address.
18. The provision of privacy screens was not suggested during the initial application. Whether screens were being proposed or not was also a point I sought clarification on at the Hearing and in my pre-hearing note. Potential concerns over the effect of the screen on character and appearance also indicate that the imposition of a condition without further details or clarification may not have been appropriate. That the Council considered a condition was appropriate at the Hearing does not mean that they were unreasonable at the time of their decision.
19. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the following matters and a partial award of costs is therefore warranted for the following:
 - Responding to alleged conflict with Policies LP27, LP1, E1 and E2,
 - Responding to alleged conflict with Policy LP26 up to the time of the Council's appeal statement,
 - Responding to the refusal reason concerning future living conditions for the occupiers of unit RO1 with regard to daylight, and
 - Responding to whether the fallback was a material consideration up to the time of the Council's appeal statement.

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 Hackney shall pay to Mr Mike Penn of Little Venice Developments Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred as outlined above; 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 Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stuart Willis

INSPECTOR