



Costs Decision

Site visit made on 7 January 2025

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2025

Costs application in relation to Appeal Ref: APP/X5210/W/24/3353374 154 Royal College Street, Camden, London NW1 0TA

- 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 Mrs Miriam Leah Blum of Ashblue investments Ltd 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 the change of use of ground floor (and basement) commercial unit to residential, erection of a ground floor rear extension, mansard roof extension and basement excavation including the insertion of a rear lightwell, all to enable use as two flats.
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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 (the Guidance) 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 Guidance explains that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, although the 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.
4. The applicant sets out a detailed case and commentary seeking a full award of costs. The costs submission relies on the planning appeal papers and additional arguments specifically as part of the application for costs itself. The papers include the various email and other exchanges between the applicant and the Council during the processing of the application the subject of the appeal as well as in connection with other proposals.
5. I have taken all the submissions into account and do not repeat all the matters here, however, very much in a general summary, it is argued that the Council has failed in its duty to facilitate the proposal and has hindered and not taken into account the details and circumstances that should have led to an approval. In terms of the Guidance the case is made including that there has been a failure to substantiate each (any) reasons for refusal on appeal and development has been prevented that should clearly have been permitted.
6. For instance, the applicant argues that the permission and conclusions that allowed the loss of the commercial space at 156 Royal College Street are

directly applicable to the site at No 154 and, therefore, the Council should have been consistent in its decision making with regard to this change of use element for No 154. The applicant explains that the commercial space had been empty for some years, was available if it had been needed and if a consistent approach had been undertaken the Council should have realised that a refusal was not justified or reasonable.

7. It is also argued that the effects on the character and appearance of the area had no reasonable basis for refusal based on the design, character of this part of the street and the evidence submitted as part of the application and appeal.
8. In terms of the basement issues, the applicant believes that the Council and its consultant did not take into account that the original Basement Impact Assessment (BIA) was from a suitably qualified person and was acceptable, yet delayed consideration of the document causing unnecessary delay and costs. Additionally, in the applicant's view, the costs charged by the Council's consultant in considering the Assessment, and revisions, has been extravagant.
9. In terms of the fourth reason for refusal, the applicant sets out information including whereby it is argued that the Council did not take into account the certificate of lawful use confirming that the basement had a lawful residential use as a studio flat. The lack of willingness to confirm the use, despite this documentation, led to arguments over the need for a legal agreement, the related reason for refusal and wasted costs at the appeal stage.
10. Overall, the applicant argues strongly on all fronts that the Council has been unreasonable and disproportionate, and it was this behaviour that led to the development being refused when it should clearly have been permitted.
11. The Council has responded to these points. It relies on its Planning Report to explain the reasoning for the refusal in terms of the impact on character and appearance, and regarding its position concerning the loss of commercial space. In terms of the basement issues, it is explained that the Council highlighted to the applicant that this information was required as part of the original application, and then waited for its submission which took some months. The Council make the case that the need and costs for such an assessment are clearly set out in its publication Planning Guidance on Basements and this confirms that the Council will expect an independent verification of Basement Impact Assessments to be funded by the applicant.
12. It is also explained that during the period when the Council's consultant was considering the BIA, because the Council was minded to refuse the application for other reasons, the applicant sought a determination of the application at that point. The refusal was, therefore, issued prior to the response from the Council's consultant, and the decision included a reason that the basement issues had not been shown to have been addressed. On this basis, it is argued that this reason for refusal was reasonable and appropriate at that time.
13. In terms of the reason for refusal concerning the need for car-free housing, the Council predominantly rely on the plans that the applicant submitted which annotated that the basement was in commercial use. Based on that position with no up-to-date information to demonstrate otherwise, the Council proceeded on the basis that a new unit of residential accommodation would be formed. The Council then took the position including that the appellant, when highlighting the certificate of lawful use and development which identified the

studio flat, was introducing new evidence at the appeal stage, and that it was not reasonable to take this document into account.

14. I have carefully considered all these matters and the justification for the four reasons for refusal, together with the detailed submissions from the applicant. The first reason for refusal concerned the loss of the commercial space. The Planning Report adequately references the applicant's case regarding the situation at No 156 and addresses why this and other considerations should not outweigh the requirements of Policy E2 of the Camden Local Plan 2017. I consider that this policy is appropriately applied to the circumstances of this case, and that the Council found that the balance falls against the scheme in this respect. I have come to a similar conclusion. It follows that the Council have acted reasonably, that the related reason for refusal was justified and the appeal could not have been avoided.
15. In terms of the effect of the proposal on the character and appearance of the area, the Planning Report details the various aspects of the scheme and concludes that most elements of the physical building works would not be harmful. It, however, finds some aspects would not be consistent with the character of the area, including the Camden Broadway Conservation Area.
16. The Report acceptably examines the key aspects of the area, and explains why the lightwell (and railings), which are very infrequently to be found at the frontage of commercial premises in this area, together with the change of use, would be harmful. To support this view, I am conscious that the Conservation Area Appraisal highlights that a positive feature of the area is the mix of commercial and residential uses, which is an issue for consideration with this appeal.
17. The effect of the changes to the character and appearance of the Conservation Area, and its heritage significance, are matters of planning judgement. While I have come to a different view on the effect of the scheme on the area, the Council's approach has been adequately reasoned, with sufficient detail and policy references, to support its position. The approach of the Council and the related reason for refusal does not, therefore, constitute unreasonable behaviour.
18. In terms of the basement issues, it appears that the application was originally submitted without the required assessment. The Council brought this to the applicant's attention and a BIA was submitted. This was being considered by the Council's consultant, but as the Council indicated that the application would be refused, the appellant sought a decision in advance of the advice from the consultant. The application was duly refused including because the BIA, at that time, was not audited and shown to be acceptable. I do not consider, in all the circumstances, that this was an unreasonable approach for the Council to take.
19. The applicant included the BIA as part of the appeal papers. The Council by that time had received the advice of its consultant and included this response in its planning appeal statement. This again was reasonable. The Council's consultant raised concerns with aspects of the BIA and this supported the approach to refusing the application due to uncertainty that basement issues had been addressed. That the applicant had not seen this evidence, as part of this proposal, prior to this point was one of the risks of requesting the Council to make a decision during the processing of the application at that point, and then appealing the decision.

20. The applicant then sought to submit further evidence in the form of a revised BIA beyond the normal point in the appeal process for submitting such new information. I was initially concerned with this approach and that it sought to evolve the scheme at the appeal stage.
21. However, as the Council was also looking at this information as part of another proposal, it confirmed that the revised information was acceptable and that the related reason for refusal had been resolved. This assisted the processing of the appeal on this issue. It follows, when considered in the round and in my judgement, the Council has been generally diligent and considered the basement issues appropriately, such that ultimately a resolution of this issue was able to be reached. There has been no unreasonable behaviour by the Council in this respect.
22. The extent of costs associated with the Council's consultant for the work to consider the BIA, and revisions, are noted. However, these costs are not matters for me to deliberate upon as part of whether or not there have been unreasonable behaviour in the appeal process.
23. In terms of the fourth reason for refusal, it does appear that the information on the existing floor plans, when originally submitted, showed that the basement was annotated to be in commercial use. However, on the other hand, the application form indicates that the proposal would not increase the number of residential units on the site.
24. The Council worked on the basis that an additional residential unit would be formed and did not, in the section in the Planning Report, list all the relevant history for the appeal property, other than a 2022 refusal (2021/5672/P). However, even the description of this 2021 development included the wording that the development was combining the ground floor shop with the basement studio flat to create a one bedroom maisonette. This alone should have flagged up that there was an issue to resolve regarding the use of the basement area.
25. Furthermore, if the certificate application from 2018 had been included in the planning history section, which I believe should have been the case, this would have emphasised and reinforced the studio flat use of the basement area. Additionally, the description of the prior approval application, refused in 2022, also specified that this proposal was to combine the ground floor shop with the basement studio flat. Again, this was not listed in the planning history and was consistent with the other information regarding the use of the basement floorspace.
26. Consequently, despite the annotation on the submitted plans, I consider that there was a deficiency in the analysis of the uses on the site by the Council, with insufficient care to have regard to the planning history of the property. This information should have formed part of the starting point of the assessment of the proposed uses at the site. As this issue was not properly documented and noted in the Report, this then followed through into the analysis and conclusion that an additional unit of accommodation was sought. This led to the associated reason for refusal regarding the need for a S106 agreement to deliver car-free housing for this unit.
27. Subsequently, when the certificate of lawful use decision was identified by the applicant, the Council sought to undermine this information by arguing that this was introducing new evidence that should not be taken into account. However,

this certificate decision was made by the Council itself, was a matter of record and a document that it should have already been aware of. At that point, the Council does not appear to have reflected on this information and considered revising its position, or providing a more cogent approach than simply saying, in summary, that circumstances may have changed since the certificate was granted. The certificate is a legal decision on the lawful use of the basement and there is no persuasive evidence from the Council that the legal use on the ground has changed.

28. It seems to me, that the Council should have better researched and understood its own planning records. If it had done so it would have sought clarification on the use of the basement and come to the conclusion that an additional unit of accommodation was not being formed.
29. In these circumstances, the Council should then have reached the position that a legal agreement for car-free housing was not required (or at least explained why although a new unit was not being created, a planning agreement was still necessary). The deficiencies in the Council's approach led to the associated reason for refusal and then required the applicant to seek to address this as part of the appeal process, when it should not have been necessary. This constitutes unreasonable behaviour by the Council and this led to unnecessary and wasted expense in the appeal process.

Conclusion

30. For the reasons explained above, the Council acted reasonably in refusing the proposal for the first three reasons. Consequently, the appeal could not have been avoided and, therefore, an award of costs is not merited in these respects.
31. However, there appears to be shortcomings in the way that the Council examined the planning history and, as I have explained above, this led to the appellant to have to address this related matter as part of the appeal proceedings, when it should not have been necessary. The approach of the Council which led to the fourth reason for refusal, when considered as a whole and even taking into account the annotation on the original floor plans, constituted unreasonable behaviour and this led to additional and wasted expense in the appeal process. While a full award of costs is not justified, a partial award is merited in relation to the applicant having to address the fourth reason for refusal at the appeal stage. I will make an award accordingly.

Costs Order

32. 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 to Mrs Miriam Leah Blum of Ashblue investments Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the appeal process in addressing the Council's fourth reason for refusal concerning the issue in respect of car-free housing, such costs to be assessed in the Senior Courts Costs Office if not agreed.

33. 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 an agreement as to the amount.

David Wyborn

INSPECTOR