
Costs Decision

Site visit made on 8 December 2020

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2020

Costs application in relation to Appeal Ref: APP/Y5420/W/20/3257208 27 Shepherds Close, Hornsey, London N6 5AG

- 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 Candice Lake and Didier Ryan for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal of the Council to grant planning permission for 3 bedroomed home on vacant land to the west of Shepherds Close.
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Decision

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

Reasons

2. Paragraph 030¹ of the *National Planning Practice Guidance* (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 051² of the PPG states that awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.
4. The applicants argue that the application was unreasonably refused, that there is insufficient evidence to support the reasons for refusal and inaccurate assertions regarding the development's impact, and that there was a failure to communicate which could have prevented the appeal.
5. The applicants sought pre-application advice and consequently made adjustments to their proposals. The reasons given on the Council's decision are in line with the comments made in that pre-application advice, which also states that the advice is given without prejudice.
6. I also note that despite the community consultation there is a considerable weight of objection from other residents of Shepherd's Close, which the Council is required to take into account. The PPG states that pre-application advice cannot pre-empt the democratic decision-making process.
7. The statement accompanying this application states that the applicants were not made aware of the Council's intention to refuse the application until 22 January 2020, two days before determination. However, the email chain

¹ Reference ID: 16-030-20140306

² Reference ID: 16-051-20140306

shows that the Council contacted the applicants on 16 January 2020. This email raised the issue of the loss of open space and that the application was being discussed at a higher level within the planning department. That email also notes that the amendments to the original design had resulted in a relatively small reduction in the dwelling's footprint.

8. The email from the Chair of the Planning Committee indicates that the issue is the principle of development rather than the design of this specific dwelling. However, this is not set out in the reasons for refusal, which are concerned with the dwelling's footprint, scale, associated paraphernalia and limited space. The officer's report sets out that the *principle of development in this is acceptable, ... subject to detailed considerations*. On balance, I give the officer's report more weight than an informal email from a councillor as this forms the basis of the delegated decision. If the principle of development was a contributory reason for refusal, this would have been clear from the officer's report as well as the Council's decision. As such, whilst I acknowledge that there has perhaps been poor communication, the passage of an application through the determination process can be sometimes unpredictable and I am satisfied that the Council has not acted unreasonably in this regard.
9. The officer's report is a well-reasoned and balanced document that clearly sets out its concerns. There is an appropriate level of evidence and key points are repeated in the reasons for refusal. It is argued by the applicants that the Council's appeal statement fails to consider all the issues. However, the appeal statement is an addendum to the officer's report and there is no necessity for a council's appeal statement to repeat information to be found elsewhere in the evidence. This does not constitute unreasonable behaviour.
10. In any case, there can be no certainty until all representations have been considered and the decision issued. I appreciate that the applicants consider that the development has considerable design merits sufficient to overcome the Council's concerns, but the Council disagreed, as have I. I see no evidence that the head of the planning department has done anything other than apply the policy tests set out in the local development plan.
11. As to the description of the plot, I have addressed in my decision that whether the site is described as garden land or an infill site is not particularly determinative. I am also satisfied that the Council's description of the site has not influenced its reasoning as this is based on its contribution to the locality and the Highgate Conservation Area (HCA) rather than a prescriptive approach based on its categorisation. Nor do I find the Council's assertion that there have never been buildings on the site to be influential in its reasoning. I conclude that the Council has not acted unreasonably in describing the site as garden land.
12. With regard to the Council's assertion that the applicants' heritage statement describes the site as contributing negatively to Shepherd's Close, I reached the same conclusion. The statement sets out in paragraph 8 that 6 – 27 Shepherds Close and the garages are negative contributors to the HCA. Paragraph 18 then states that *the site does not have distinct visual of historic identity. It is a part of a negative contributor ... to the conservation area*. At best there is a lack of precision in the heritage statement. Moreover, the text quoted by the applicants is taken from paragraph 18, not paragraph 14 as stated. In any case conservation area appraisals cannot be expected to cover

every plot or dwelling, even where there is a considerable level of detail, as is the case with the HCACA.

13. The Inspector for the previous decision makes an observation in relation to the contribution the site made to the street scene in 2002. The street scene does not appear to have changed very much since that appeal and I have made the same observations. I have also made the point that my conclusions would be the same with regard to the impact of the development on the character and appearance of the street scene even if the site was not within the HCA.
14. Given the site's size and location I see no reason to give weight to the site's exclusion from the Haringey's Open Space Study. This, as far as I can see is concerned with the public realm and sites with greater visibility than this.
15. The procedural disagreement between the parties with regard to an application to fell the trees is outwith both the appeal and this application for costs. There is nothing before me to indicate that the trees are of particular importance to the determination of the application.
16. In my experience, it is not uncommon for developments to be refused planning permission even when pre-application advice from officer's report appears favourable. The determination period is precisely that and there can be no certainty until a council issues its decision. Whether concerns are raised later rather than earlier in that process is not necessarily indicative of a council's unreasonable behaviour. Even if those concerns had been raised earlier in the determination period it would not necessarily have prevented the appeal. Moreover, there is no requirement for a council to allow additional time for further amendments to be made³.
17. Other points are raised by the applicants but they carry insufficient weight to alter my reasoning.

Conclusion

18. I am unable to conclude that the Council has acted unreasonably. As such, unreasonable behaviour leading to unnecessary costs at appeal has not been demonstrated. The application for an award of costs is refused.

A Blacq

INSPECTOR

³ Reference ID: 14-061-20140306