



Costs Decision

Hearing held on 28 September 2011

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 November 2011

Costs application in relation to Appeal Ref: APP/X5210/A/11/2154322 55 Rochester Place & 3A Wilmot Place, London, NW1 9JU

- 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 Micagold Ltd for a full award of costs against the Council of the London Borough of Camden.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of a three storey plus basement and mansard end of terrace building at 3A Wilmot Place comprising of 4 residential units and a three storey plus basement end of terrace building at 55 Rochester Place comprising Class B1 on all floors following demolition of existing building.
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Decision

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

Submissions for Micagold Ltd

2. The costs application was made in writing. It makes reference to paragraphs A3, A12, A18, A20, A24, A28, B15 and B16 of Circular 03/2009 *Costs Awards in Appeals and Other Planning Proceedings*.
3. Further comments were made to the effect that it was not intended to infer that the forwarding of the Business Premises Study (BPS) was delayed. Council officers are advocating a different form of development in another application which is contrary to its own policies.

Response by the Council

4. The costs application is a misinterpretation of the situation and has been selective. The outstanding reason for refusal was substantiated at the time through the decision notice which makes a clear reference to relevant employment policies in the Core Strategy. The comprehensive officer report also discusses quantitative and quality issues and this was continued during the appeal process. The decision taken is a matter of professional officer judgement taking account of local policies and guidance and other material considerations.
5. It was not necessary to refer to the BPS explicitly as it is not part of the Local Development Framework or the Camden Planning Guidance (CPG). Rather it informs the CPG. Indeed, CPG5 was not out to consultation at the time of the original decision being adopted in September 2011. The implication that there was a delay in supplying it is refuted as this is the first knowledge that the case officer has had of this claim.

6. An alternative scheme is under consideration but there is no decision and no merit in relying upon it. A similar application for costs was made in respect of the 2 previous appeals which were concerned with similar matters but an award was not made and the same outcome should follow. The Council has not been unreasonable but has substantiated its judgement both in the application and at appeal.

Reasons

7. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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.
8. The reason for refusal refers to an "unacceptable loss of an existing employment building". However, this is only half the story as it fails to reflect the fact that replacement space would be provided. Moreover, both the officer report and the Council's statement make it plain that there would be qualitative defects with the proposed Class B1 building. This aspect of the Council's position is not revealed in the reason for refusal. As such it was not framed sufficiently carefully and is incomplete and unclear.
9. Throughout the consideration of the application and the appeal the Council persisted in its interpretation of Policy DP13 of the Development Policies. As I outline in my decision in paragraph 11 it was incorrect to consider the proposal simply as if a change to non-business use was proposed. It is important that development plan policies are applied properly. Nevertheless, the Council did also allege a breach of criteria e) and f) and provided adequate evidence to back up its stance.
10. References to the previous appeal decisions permeate the officer report and the Council's statement so these were not ignored. It was particularly acknowledged that the submission sought to overcome the previous reasons for dismissal but also that the acceptability of re-provided employment floorspace is both a qualitative and quantitative issue. Furthermore, the revised scheme was considered against up-to-date policies. It remains, as far as I am aware, the Council's position that there are potential benefits in redevelopment and although implied in the reason for refusal it is not opposed to the loss of the existing building per se.
11. It is somewhat surprising that the comprehensive BPS was not referred to by the Council at either the application or appeal stages. Whilst intended to inform the emerging CPG it is an authoritative document in its own right and would have assisted the Council's deliberations. That said, due to the efforts of the appellant the document was available at the hearing.
12. Planning officers are alleged to be advocating to third parties a form of development comprising a light industrial unit on the ground and lower ground floors with residential above. However, there is no firm evidence that this is being promoted and the application is undetermined. Ultimately it will be for the Council to decide that scheme having regard to all relevant considerations including the BPS. There has been no unreasonable behaviour in that regard.
13. Returning to the other aspects of the costs application there are a number of areas where the Council's actions have been less than satisfactory. Specifically the wording of the reason for refusal, the interpretation of Policy DP13 and the

lack of reference to the BPS. However, it has produced evidence to clearly show why the development should not be permitted and its approach is rooted in the development plan supported by CPG5 and the BPS. As such, when taken overall, unreasonable behaviour did not occur and the appellant has not incurred unnecessary expense in pursuing the appeal. An award of costs is therefore not justified.

David Smith

INSPECTOR