The Planning Inspectorate

Costs Decision

Site visit made on 16 March 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date:03 August 2020

Costs application in relation to Appeal Ref: APP/X5210/W/20/3244112
Flat 1, 114 Fitzjohn's Avenue, London NW3 6NT

- 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 Jennifer Kemmeter 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 conversion of ground floor three-bedroom unit with first floor two-bedroom to create one four bed unit (C3).

Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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 also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations or fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

4. The Applicant submits that the Council has acted unreasonably by providing incorrect advice at pre-application stage, has an erroneous application of relevant policies (including failure to give due regard to relevant policies) and failed to alert the Applicant for the need for a section 106 agreement during the course of the determination of the application.

5. The Council have responded that the pre-application advice was given through their Duty Officer system and not via the chargeable pre-application advice service. However, the Council state that it is regrettable that the duty planner did not take on board the policies in the Hampstead Neighbourhood Plan (2018) (HNP) and whilst pre-application advice is not binding, the planning application fee was refunded as a result of the duty officer advice.

6. In terms of the application of relevant policies, the Council does not accept that due regard has not been given to Policy H3 of the Camden Local Plan 2017 (LP)

and that Policy H8 of the LP is not a relevant policy in the determination of the proposal.

7. Finally, in relation to the need for a section 106 agreement the Council set out that an informative was included on the decision notice which stated that this reason for refusal could be overcome by entering into such an agreement. It is further submitted that the Applicant did not wish to enter into such an agreement.

8. From the evidence before me, it is clear that the pre-application advice which was given via the duty planning officer was incorrect, and this has already been acknowledged by the Council and the planning application fee has already been refunded.

9. Given that Flat 2 had already been purchased by the Applicant prior to the seeking of such pre-application advice, it is clear that regardless of incorrect advice at that stage it was the Applicants intention to seek to amalgamate the two flats.

10. In respect of the consideration of the relevant planning policies, it is clear to me that compliance with the relevant planning policies was a matter of planning judgement. Turning to Policy H8 of the LP, the policy text itself does not explicitly refer to housing designed for vulnerable persons. However, the supporting text at paragraph 3.203 does provide that clarification.

11. I also find it significant that the majority of the information relating to the personal circumstances of the Applicant and the exceptional circumstances required to justify the proposal (in the context of Policy HC1 of the HNP) were not submitted with the planning application, but were submitted with the appeal (including the additional information submitted with the final comments which resulted in it being necessary to consult the Council on this additional information).

12. In my decision, this additional information was a very significant factor which tipped the balance in favour of the proposal. As the Council did not have this information when they considered the application, I consider that the decision which the Council came to (with the information they had before them) was not unreasonable.

13. Finally, in respect of the need for a section 106 agreement, the evidence suggests that the Council did not inform the Applicant during the course of the consideration of the application. However, it is clear on the decision notice that the Council required an agreement both in the second reason for refusal and the associated informative.

14. It is also significant that as part of the appeal submissions the Applicant argued that such an agreement was not necessary. Furthermore, in the event that I agreed with the Council on this issue, no such agreement was supplied with the appeal submission. That said, in my decision, I considered that such an agreement was not necessary. However, this was also a matter of planning judgement.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and therefore an award of costs is not justified.

Chris Forrett

INSPECTOR