



Costs Decision

Site visit made on 24 May 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2021

Costs application in relation to Appeal Ref: APP/X5210/W/20/3261177 Flat 1, 23 Dartmouth Park Hill, London NW5 1HP

- 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 Ms Phillipa Huckle for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the demolition of existing side and rear extensions, enlargement of existing basement, construction of replacement side and rear extensions, including lightwells to extended area of basement.
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Decision

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

Reasons

2. 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. Paragraph 049 of the PPG gives examples of unreasonable behaviour by local planning authorities. These include:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead;
 - requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework ("the Framework"), on planning conditions and obligations;
 - failing to produce evidence to substantiate each reason for refusal on appeal; and
 - making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

The applicant's claim includes specific elements relating to each of these examples, which I shall address in turn.

4. The planning application was submitted in February 2020. From the evidence submitted by the applicant, it seems that there was little correspondence between the parties between February and May 2020, then more regular exchanges addressing various matters (including changes to the scheme) followed between June and September, during which period the applicant's growing frustration with the Council is apparent. The application had not been determined by the time the appeal was lodged in October 2020. I note the advice in Paragraph 048 of the PPG that "in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit", and that "if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether"¹. However it is relevant to note here that, for the reasons which are set out in my main decision, I found that the proposal conflicted with the development plan and consequently dismissed the appeal. It therefore follows that I cannot find that the Council prevented or delayed development which should clearly be permitted.
5. The applicant argued that matters in respect of a Construction Management Plan ("CMP") could be dealt with by a planning condition rather than a planning obligation as sought by the Council. However, while a condition can sometimes be an appropriate route to securing a CMP in this case, for reasons which are again set out in my main decision, I concluded that a condition would be unlikely to be effective. I therefore do not find that planning permission was refused on a ground capable of being dealt with by a condition.
6. I found that some elements of the planning obligation sought by the Council, namely the CMP implementation support contribution, the "construction impact bond", and a payment to cover the cost of repairing damage to the footway, had not been justified. The Council's reasons for refusal in these respects were not substantiated, and consequently I could not conclude that all elements of the planning obligation sought by the Council through a planning obligation would comply with legislation and national planning policy set out in the Framework. Furthermore, I agree with the applicant that the Council's assertions regarding potential damage to the footway and the need for a payment to repair it were vague, generalised and, on the basis of the evidence before me, not supported by objective analysis. In these limited matters, I therefore consider that the Council's behaviour was unreasonable in the terms set out in the PPG. However, in order to make an award of costs I also need to be satisfied that this has resulted in unnecessary or wasted expense.
7. The elements of the Council's putative reasons for refusal relating to the need for the submitted Basement Impact Assessment to be independently verified, and requiring a CMP to be put in place, were reasonable and substantiated. Even if the Council had sought a narrower planning obligation, addressing only the need for a CMP, it is clear from the evidence before me that it would not have approved the planning application in its submitted form. To my mind the

¹ Paragraph: 048 Reference ID: 16-048-20140306

applicant would therefore have been likely in any event to appoint a consultant to fight the appeal. Addressing the CMP implementation support contribution, construction impact bond, and footway repair elements of the planning obligation sought by the Council took up a few short paragraphs (none of which appear to have required the preparation of substantive new material) in an appeal statement of 18 pages plus appendices. While it is regrettable that the Council acted unreasonably in putting forward objections to the proposal which were partly unsubstantiated and vague, and consequently the related elements of the planning obligation which it sought were not demonstrated to be justified, on the balance of the evidence before me I am not persuaded that this has resulted in unnecessary or wasted expense for the applicant.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector