The Planning Inspectorate

Costs Decision

Hearing held on 14 and 15 November 2023

Site visit made on 15 November 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date:

15th January 2024

Costs application in relation to Appeal Ref: APP/A5840/C/22/3306846
41C, 41D and 41E Sydenham Hill, in the North East corner of Beltwood 41 Sydenham Hill, London SE26 6TH

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the Council of the London Borough of Southwark for a full award of costs against Mr Greg Coram.
- The appeal was against an enforcement notice alleging the construction of three terraced houses and the alteration of ground levels.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice 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. Applications for costs were made by the main parties at the close of the Hearing. This costs decision relates to the application made by the Council (the applicant); the appellant's application is the subject of a separate decision. All costs submissions were made in writing. All costs submissions are therefore a matter of record and there is no need for me to rehearse details in this decision.

4. I have explained in my appeal decision why the plans submitted by the appellant were sufficient to allow me to consider the appeal under grounds (a) and (f). These are clearly annotated and sufficiently detailed to allow me to reach a view on the appeal under those grounds when considered alongside what I saw during my site visit. It was not therefore unreasonable for the appellant to pursue appeals under grounds (a) and/or (f) without providing any further plans or documents specified in a local validation list which may otherwise be required as part of a planning application.

5. It was unreasonable for the appellant to present Options 1, 2, and 3 as part of his Hearing Statement, only to 'withdraw' these proposed amended developments shortly after the Hearing opened. As obvious alternatives to demolishing the whole building, I accepted plans showing Options V1, V2, and V3 as late evidence. It was unreasonable for the appellant to put these forward

at such a late stage in the appeal process, as there was no apparent good reason that they could not have been provided earlier.

6. The applicant would have been expected to have assessed Options 1, 2 and 3 in advance of the Hearing as they formed part of the appellant's Hearing Statement. Indeed, the applicant adopted Option 3 as part of its case in the appeal under grounds (a) and (f) as an acceptable alternative to the demolition of the whole building.

7. As Option 3 became part of the applicant's case, time spent considering that proposed amended development was not unnecessary or wasted. The differences between Options 1 and 2 compared to Options V1, V2, and V3 are such that very little, if any, unnecessary or wasted expense would have been incurred by the applicant when considering Options 1 and 2 in advance of the Hearing. Any time spent considering Options 1 and 2 would have been relevant to the consideration of Options V1, V2, and V3. It has not been demonstrated that any wasted or unnecessary expense was incurred by the applicant as a result of the late submission of Options V1, V2, and V3.

8. It appears that I have only been provided with some of the correspondence exchanged between the main parties where a pre-Hearing site visit was being discussed. However, from that correspondence it is clear that the appellant never confirmed (and does not appear to have implied) that a meeting within Beltwood could go ahead at 1300 on 9 November 2023. The applicant sought confirmation from the appellant as late as 1627 on 8 November, but there is no evidence that the appellant responded to that email before advising on the morning of 9 November that the site visit could not go ahead within Beltwood.

9. It was the applicant's unilateral decision to instruct Counsel to visit the site with officers without first receiving confirmation from the appellant that Beltwood would be accessible to them. The correspondence provided does not show that a site visit had been arranged or cancelled by the appellant. It shows that the appellant advised that a site visit, which had not been confirmed, could not proceed at 1300 on 9 November. This was not unreasonable behaviour by the appellant. This would remain the case even if it had been demonstrated that there was a lack of cooperation from the appellant to arrange a pre-Hearing site visit. It appears unlikely that a visit within Beltwood the week before the Hearing would have been necessary if the applicant had carried out adequate investigations prior to issuing the enforcement notice.

Conclusion

10. The appellant acted unreasonably in putting forward Options V1, V2, and V3 at a late stage in the appeal process in place of Options 1, 2, and 3. However, that unreasonable behaviour did not result in the applicant incurring any unnecessary or wasted expense in the appeal process.

11. The appellant's failure to submit a suite of plans consistent with a local validation list for planning applications was not unreasonable. The appellant's failure to confirm a pre-Hearing site visit appointment for the purposes sought by the applicant was not unreasonable. The appellant's decision to notify the Council that a pre-Hearing site visit could not go ahead at the time put forward by the applicant, on the morning of the unconfirmed appointment, was also not unreasonable.

12. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

L Douglas

INSPECTOR