
Costs Decisions

Site visit made on 2 August 2016

by Y Wright BSc (Hons) DipTP DMS MSc MRTPI

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

Decision date: 05 October 2016

Costs application A in relation to Appeal Ref: APP/E5900/W/16/3144117 519-523 Cambridge Heath Road, London E2 9BU

- 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 Central Training Group Ltd for a full award of costs against the Council of the London Borough of Tower Hamlets.
 - The appeal was against the refusal of planning permission for demolition of the existing building and construction of a new building with re-provision of training facility (Class D1) at ground floor and provision of 9 residential dwellings (Class C3) on first to fourth floors (2 x 3 bed, 5 x 2 bed and 2 x 1 bed).
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Costs application B in relation to Appeal Ref: APP/E5900/W/16/3144117 519-523 Cambridge Heath Road, London E2 9BU

- 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 the Council of the London Borough of Tower Hamlets for a full award of costs against Central Training Group Ltd.
 - The appeal was against the refusal of planning permission for demolition of the existing building and construction of a new building with re-provision of training facility (Class D1) at ground floor and provision of 9 residential dwellings (Class C3) on first to fourth floors (2 x 3 bed, 5 x 2 bed and 2 x 1 bed).
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Decisions

1. Application A for an award of costs is allowed in the terms set out below.
2. Application B for an award of costs is refused.

Procedural Matter

3. As set out above, there are two applications for awards of costs for the same appeal, one from the appellant and one from the Council. Although I have considered each application on its individual merits, to avoid duplication I have dealt with the two costs applications together in this document.

Reasons

4. The Planning Practice Guidance (PPG) 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.
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Application A

5. As regards application A, the appellant has applied for an award of costs on four counts. Whilst Counts 1, 3 and 4 relate to matters prior to the appeal process the PPG specifically states that *'behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded'*¹.
6. Counts 1 and 4 – The appellant contends that the Council caused significant delays in determining the planning application and did not apply the development plan and Framework as they are supposed to be applied, which prevented and delayed development which should be permitted.
7. I have evidence before me that the appellant agreed to a short extension of time in February 2015. This follows an email dated 24 February 2015 where, subject to the submission of amended plans, the Planning Officer confirmed that he would be recommending the scheme for approval. Revised drawings were subsequently provided by the appellant.
8. However in an email dated 17 March 2015 the Planning Officer stated that the proposal was now considered to be unacceptable as it would fail to optimise the use of the land and provide a balance of housing types. Whilst subsequent correspondence between the Council and appellant followed, no substantive reasons have been provided as to why the planning application was not determined until 23 October 2015. I note that the appellant could have submitted an appeal for non-determination, but this does not justify the significant delays that occurred.
9. Furthermore in my main decision I have concluded that the appeal proposal accords with the development plan as a whole. No substantive evidence has been provided by the Council to justify a higher density of development above that already proposed at this site. Consequently I consider that the Council has acted unreasonably by causing significant delays in the determination of the planning application and through the lack of substantive evidence has prevented development which should have been permitted.
10. Count 2 – Whilst residential development within the vicinity of the appeal site has been permitted, the Council considers that these are materially different to the appeal proposal. However, even though each case must be determined on its own merits, in my main decision I have noted that the Council granted these other developments planning permission, despite receiving similar HSE advice to the appeal scheme. I have no evidence before to demonstrate that circumstances have significantly changed to warrant a different approach to this advice. Consequently I consider that there has been some inconsistency in the approach taken by the Council in this regard and I find that this constitutes unreasonable behaviour.
11. Count 3 – The Council confirms that it would only seek a S106 agreement to secure affordable housing if the development was to provide 10 or more dwellings, in accordance with policy. The Council did not request this for the appeal scheme and it was not a reason for refusal. As such the Council has not acted unreasonably in this regard.

¹ Paragraph: 033 Reference ID: 16-033-20140306

12. Based on the above, I therefore conclude that the Council has acted unreasonably in regards to counts 1, 2 and 4, which has resulted in the Council delaying and preventing acceptable development from being permitted. I consider this has directly led to the submission of the appeal by the appellant.
13. In this instance, and as I have no evidence to the contrary, I find that unreasonable behaviour resulting in unnecessary expense as described in the PPG has been demonstrated for counts 1, 2 and 4 and that a partial award of costs in relation to the appeal proceedings, is justified.

Application B

14. The Council contends that the resource intensive work expended on the appeal could have been avoided, if the appellant had withdrawn the application and submitted a suitably amended scheme. The Council therefore considers that the appellant behaved unreasonably in this regard.
15. Whilst I note that the Council informed the appellant in March 2015 of its concerns about the planning application, the assertions that the appeal scheme could support a higher density of development above that already proposed has not been justified by evidence. The appellant has provided clear reasons as to why additional accommodation at the site would not meet policy requirements. On this basis the appellant did not amend the proposals.
16. In conclusion I find that the appellant did not behave unreasonably by submitting the appeal and that the Council's costs in responding to the appeal were not unnecessarily incurred. For the reasons given above, an award of costs is therefore not justified.

Costs Order

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Tower Hamlets shall pay to Central Training Group Ltd the costs of the appeal proceedings limited to those costs incurred in relation to counts 1, 2 and 4 above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to the Council of the London Borough of Tower Hamlets, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Y Wright

INSPECTOR