

Costs Decision

Hearing held on 1 November 2016

Site visit made on 1 November 2016

by H Butcher BSc (Hons) MSc MRTPI

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

Decision date: 05 December 2016

Costs application in relation to Appeal Ref: APP/F5540/W/16/3154161 32-34 Heston Park House, New Heston Road, Hounslow, TW5 0LJ

- 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 Amba Properties for a full award of costs against the Council of the London Borough of Hounslow.
 - The hearing was in connection with an appeal against the refusal of planning permission for a change of use from mixed office/education to residential use x 10 units.
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Decision

1. The application for a full award of costs is refused but a partial award is granted in the terms set out below.

The Submissions

2. The costs application for the appellant was submitted orally at the hearing as was the Council's response. Details of the oral submissions are set out in the Annexe at the end of this decision.

Reasons

3. 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 expense in the appeal process.
 4. It will be seen from my decision that reasons 2, 3, 4 and 6 of the Council's decision to refuse planning permission could have been resolved by way of suitable conditions. There is no evidence of any attempt being made by the Council to engage with the appellant during the course of the application to overcome these issues in such a manner.
 5. Whilst early engagement is encouraged in the National Planning Policy Framework, and formal pre-application advice is offered by the Council, they cannot require that a developer engages with them before submitting a planning application and, in any event, this does not negate the need for the Council to play an active role in guiding development at application stage. Even though there are other issues with the proposal which have led me to dismiss the appeal, at least part of the time spent appealing could have been avoided had the Council looked for solutions rather than problems when making their decision.
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6. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting reasons 2, 3, 4 and 6 of the Council's refusal of planning permission is justified.

Costs Order

7. 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 Hounslow shall pay to Amba Properties, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting reasons 2, 3, 4 and 6 of the Council's refusal of planning permission, which concerned living conditions of neighbouring occupiers, character and appearance, living conditions of future occupiers; in respect of outlook, privacy, and noise, and parking provision.
8. The applicant is now invited to submit to the Council of the London Borough of Hounslow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Hayley Butcher

INSPECTOR

Annexe: Submissions made orally at the hearing

Appellant

9. There was an apparent lack of consultation between the Council and the applicant's agent. The Council have based their analysis on a lack of pre-application procedure. This was an application for a conversion of an existing building, so in effect, this was an application for an 'in principle' decision to D1 use which is, in many cases, not the subject of pre-application advice, and it's not a statutory requirement. The majority of the case could have been resolved at application stage given the will to do so.

Council

10. Formal pre-application advice is not a requirement but the agent should have looked at the policies and be able to see the clear points of conflict. The fact that it is a conversion bears no relevance to the necessity of pre-application advice. There was an 'in principle' issue with the scheme and other issues also. The Council were carrying out their duty.