

Costs Decisions

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 the Council of the London Borough of Hounslow for a full award of costs against Amba Properties.
 - 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 an award of costs is refused.

The Submissions

2. The Council's case was made in writing. The appellant's response was made orally at the hearing and the Council made some further points orally as well. 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. The Council contend that the proposed development was clearly not in accordance with the development plan and a lack of other material considerations were advanced by the appellant to indicate otherwise. They state that their decision notice directly referred to the relevant policies.
 5. In respect of the first main issue in this appeal it will be seen from my decision that I consider Policy CI1 of the Hounslow Local Plan 2015-2030 (LP) to be the most relevant policy. However, neither the Council's officer report or decision notice refer to this policy. It was not until the Council submitted its appeal statement that Policy CI1 is referenced. Therefore the appellant was not in a fair position to weigh up the merits of their appeal in relation to the correct policy, CI1, at the time of making their appeal.
 6. The Council does provide a formal pre-application advice service but it is not a requirement to use this, and it would be reasonable to expect the Council to reference all of the relevant policies in its Development Plan when making its
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decision. Whilst the Development Plan is a publicly available document, it is not reasonable to expect an appellant to seek out and respond to policies which have not been referred to at application stage.

7. The evidence submitted at appeal stage in respect of the first main issue relating to the underuse of the building and proposed alternative premises was insubstantial and lacking in detail. However, given the lack of direction from the Council I do not consider that this amounts to unreasonable behaviour on the part of the appellant.
8. In respect of the sixth main issue, relating to affordable housing, the relevant LP policy was referenced by the Council at all stages of the application and appeal but no supporting evidence was provided by the appellant to justify a departure from the development plan. However, as a result of the limited evidence provided by the appellant the Council did not have to respond in detail to this matter.
9. Many of the other issues in this appeal could have been overcome using suitable conditions as discussed in my decision. I therefore conclude that unreasonable behaviour resulting in unnecessary expense during the appeal process on the part of the appellant has not been demonstrated. Therefore, having regard to all other matters raised, an award for costs is not justified.

Hayley Butcher

INSPECTOR

Annexe: Submissions made orally at the Hearing

Appellant

10. No unreasonable behaviour has been identified. The relevant policies were fully reviewed and commented on in the grounds of appeal. It is a question of interpretation and it is natural to have discrepancy over policy. With respect to the conversion, even if not discussed, there is a decreasing need for the current use and a need for housing. The fact that there were no pre-application discussions does not negate the need to engage with the appellant. It was possible to overcome some of the issues as shown in the appeal.
11. There has been no attempt to discuss the unilateral undertaking up to this point. It has been with the Council some time. The statement from the Council has only just come down.

Council

12. A lack of knowledge of policies is not something which should be explored through the appeal process. There had not been due consideration prior to the appeal. If the appellant had had pre-application advice they would have been more informed and would have had a more acceptable proposal, therefore there would have been no need for an appeal. Given the number of reasons and robustness of the refusal the appeal was unreasonable as it had no great prospect of approval.