
Costs Decision

Site visit made on 6 February 2017

by Graham Chamberlain BA MSc MRTPI

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

Decision date: 20th February 2017

Costs application in relation to Appeal Ref: APP/M5450/W/16/3160688 Churchill Hall, Hawthorne Avenue, Harrow HA3 8AG

- 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 Mr J De Swarte for a partial award of costs against the Council of the London Borough of Harrow.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing building and erection of a stepped 3 to 5 storey building to provide 37 self-contained flats, a Class D1/D2 ground floor unit, with a re-sited entrance on Hawthorne Avenue to provide access to bin & cycle stores and associated parking, amenity areas and landscaping.
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Decision

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

The submissions for Mr J De Swarte

2. In accordance with Paragraph 049 of the Planning Practice Guide (PPG) the Council's decision involved a substantive failure as it failed to produce evidence to substantiate each reason for refusal. In particular, the Council's principal reason for refusal, which related to the design of the proposal, was not supported by cogent evidence. The Council failed to support its arguments on appeal as its defence of its position was based on a short and casual design review undertaken by Mr Tye without the benefit of a site visit. Moreover, Mr Tye did not attend the hearing. The Council had no reasonable basis to move away from the well-argued committee report. The design was encouraged and informed by the Council's professional officers and the report did not make a recommendation that was 'on balance'. Instead, the approach was endorsed.
3. In respect of affordable housing, the Council's viability advisor did not attend the hearing and the Council continued to pursue its stance that affordable housing should not be discussed as a main issue at the hearing, even though it was apparent in the appellant's submissions that he had reserved his position. It was left to the Planners to respond to any questions on this matter due to the Council's failure to attend with a viability expert. This amounted to a failure to provide a robust level of evidence to substantiate its position and counter the evidence provided by the appellant's professionally qualified expert.

The response by the Council of the London Borough of Harrow

4. The comments from Mr Tye were not the only evidence presented by the Council and was not solely relied upon as the Council's case in respect of its concerns with the design. The Council's planning consultant had reviewed the

appeal scheme and provided evidence in his Statement of Case. The Council's planning committee were entitled to reach a different conclusion to that set out in the Planning Officer's recommendation. At the hearing, certain design matters were agreed with points of disagreement clarified and focussed upon. As such, there was a constructive discussion at the hearing in which the Council behaved reasonably. Mr Tye was unavailable to attend the hearing due to a previous commitment.

5. In respect of affordable housing, the Council maintains its position that this was not a matter that required a discussion as agreement had already been reached. The Council were not aware that this was to be treated as a main issue until seeing the hearing agenda. Nevertheless, the Council were able to engage in the discussion over sales values. The Council were not able to fully respond to the late evidence presented by the appellant because this was tabled on the day of the hearing, which in itself is unreasonable.

Reasons

6. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
7. Members of the Council's planning committee were entitled to reach a different conclusion on the acceptability of the design and thus set aside the recommendation of the Planning Officer. Nevertheless, such a course of action must be supported by sound planning judgment based on a rationale argument. A member of the Council's planning committee did not attend the hearing to outline their concerns. Instead, this was left to Mr Higginbottom, the Council's planning consultant.
8. The Council's reason for refusal sets out two areas of concern with the design of the appeal scheme, the excessive height, scale and bulk and the inappropriate design. The Council's statement of case clearly addresses each of these points outlining specific and rationale concerns with the appeal scheme. The assessment was also underpinned by a cogent analysis of the character and appearance of the area that linked any concerns back to the site's context.
9. The report by Mr Tye supplemented the Council's case, the Council to not wholly rely upon it. In any event, design reviews are encouraged through the Framework so I find no substantive failing in the Council seeking to test the appeal scheme in this way. Whilst I afforded the design review only moderate weight because it was undertaken without reference to the appellant's design team or without a site visit, it was nevertheless reasonable to submit it as evidence, as Mr Tye appears to be an experienced architect and design review panel member. His failure to attend the hearing was not unreasonable as he had a prior engagement and his written comments were circulated in advance.
10. Therefore, whilst I do not share the conclusions of the Council for the reasons set out in my decision letter, I am satisfied the case presented by the Council in respect of the appropriateness of the design was not so irrational and lacking in substance as to have been unreasonable.

11. Furthermore, whilst I ultimately concluded that the design of the development and its impacts upon the character and appearance of the area would be consistent with the objectives of the development plan, the case submitted by the Council demonstrates that the acceptability of the appeal scheme in this respect was not 'clear cut'. Thus the Council has not delayed development that should clearly have been permitted.
12. The Council's position at the hearing regarding the provision of affordable housing was understandable given that they believed this matter had been resolved during the course of the application, with the appellant offering 14 units before the Council's planning committee meeting. Nevertheless, the appellant was very clear in his statement of case that he intended to present three options in respect of the quantum of affordable housing and, out of the three, 'nil provision' was his preferred option due to his analysis of sales values. It should have come as no surprise to the Council that I would wish to discuss this at the hearing.
13. Notwithstanding the Council's opening position on this matter, its representative nevertheless engaged constructively in the discussion over sales values and was able to take me through the evidence in the BNP Paribas reports, respond to any questions and address the late evidence presented by the appellant. Whilst it would have been advantageous for the Council to have attended the hearing with a viability expert it did not ultimately prove to be essential. Furthermore, the Council's position over the relevance of a Vacant Building Credit (VBC) was supported by draft guidance prepared by the Mayor of London. Consequently, whilst I have not agreed with the Council over the relevance of a VBC, its position on this matter was not speculative. As such, the Council were able to substantiate its position regarding the provision of affordable housing and the level it was seeking.

Conclusion

14. My overall conclusion is that the Council did not act unreasonably in refusing the appeal scheme on design grounds and subsequently defending its decision through the appeal process. Nor was its position over affordable housing unreasonable. Thus, there were no substantive failures. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred.

Graham Chamberlain,
INSPECTOR