

Costs Decision

Site visit made on 29 November 2016

by David Walker MA MRTPI

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

Decision date: 14th March 2017

Costs application in relation to Appeal Ref: APP/H5390/W/16/3157196 765 Harrow Road, London NW10 5NY

- 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 Max Kyte of Hamilton Court for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing building and erection of a 4 storey building incorporating a commercial use within Use Class A1, A2 and B1 on the ground floor and 9 residential units (2x1 bed, 5x2 bed and 2x3 bed) on the upper floors with associated cycle parking space, bin stores, plant room and landscaping.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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. It will be apparent from my Appeal Decision that I found the proposal to accord with development plan policies relating to living conditions. The matter has required a planning judgement in the light of the circumstances of the appeal site conditions. However, the Council was entitled to seek to negotiate an alternative scheme that it considered would better address the requirements of its SPD to avoid north facing windows. In its appeal statement the Council has adequately explained the reasons for the delays in reaching a determination on the planning application, including dealing with successive revisions to the scheme.
 4. While I have reached a different finding, the Council's assessment of the main issues is sufficiently detailed to substantiate its concerns. It is neither vague nor generalised. Moreover, the Council's concerns over the legitimacy of using conditions to restrict the use of the shared roof garden are well founded. There would remain difficulties in enforcing such conditions. On these grounds, therefore, I do not find that substantive or procedural unreasonable behaviour in the terms expressed within the Planning Practice Guidance has been demonstrated.
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5. However, in raising the lack of affordable housing as a putative reason for refusal the Council has failed to acknowledge the policy of the Written Ministerial Statement of 28 November 2014 that developments of 10 units or less should not be required to make a contribution. It is a consideration of significant weight. With regard to the advice of the Planning Practice Guidance I am satisfied that such a failure to take national policy into account amounts to substantive unreasonable behaviour. To the extent that the appellant has been required to address this element of the Council's case in further submissions additional and unnecessary expense has been incurred.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs 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 Hammersmith & Fulham shall pay to Mr Max Kyte of Hamilton Court, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the affordable housing element of the Council's case; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to the London Borough of Hammersmith & Fulham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Walker

INSPECTOR