
Costs Decision

Site visit made on 20 February 2017

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 16th March 2017

Costs application in relation to Appeal Ref: APP/U5360/W/16/3157085 224 Graham Road, Hackney, London E8 1BP

- 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 Clementine Gardens Property Ltd for a full award of costs against the Council of the London Borough of Hackney.
 - 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 the change of use from A1 (Retail) to A3 (Restaurant) and an extraction system to rear.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations.
 4. The Appellant submits that the Council has acted unreasonably in that it had failed to report the application to the Planning sub-committee such that they were forced to appeal for non-determination. It is also stated that the appellant did not delay or frustrate the local planning authority in any way and that they were re-assured repeatedly that the application was to be submitted to the sub-committee for consideration. However, there was no indication that this had occurred.
 5. The PPG advises that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation as to why there is a delay in the determination of the application. Furthermore, in an appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit.
 6. The Council have stated that given the level of public interest on this development it would have to be referred to the Council's Planning Sub-Committee and that owing to the London Mayoral elections there was no
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committee in May 2016. It has also been stated that the agenda for such meetings can be extensive and cases must be prioritised and given that permission already existed for the development from the prior approval scheme¹ (approved on 29 March 2016) it was difficult to schedule a date for this item ahead of other proposals for which permission does not already exist. As permission already exists for the development, the Council questions the necessity of the appeal and its associated costs.

7. The Appellant has referred to the prior approval decision giving a temporary permission for the use. However, whilst a flexible use² is only a temporary permission this does not require the prior approval of the local planning authority. Therefore the prior approval sought would have been a permanent permission under Part 3 Class C of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Notwithstanding that, the Council had an application for planning permission to consider, even though it related to the same development.
8. From the evidence before me the statutory determination period for the application expired on 1 March 2016 and no extension of time to determine the application had been requested by the Council. There is no evidence submitted which would explain why the application was not presented to the Planning sub-committee before that date.
9. The difficulties that the Council have alluded to in presenting the application to their Planning sub-committee are an administrative issue for the Council. However, if insufficient time is available at such committee meetings it is for the Council to address this possibly through additional meetings or changes to their delegation agreement. However, the method which the Council deal with this issue is of little concern to the Appellant.
10. Furthermore, the Council wrote to the Appellant on 20 September 2016 advising that the application was being treated as being finally disposed of as a period of 6 months had elapsed since the statutory determination date with no decision being issued and no appeal being made to the Secretary of State. It is clear from this letter that despite the lack of a Planning sub-committee in May little effort was being made to determine the application. Whilst the appeal was possibly submitted owing to the incorrect assumption that the prior approval was a temporary permission, the lack of action by the Council in determining the planning application forced the Appellant to appeal against non-determination on 22 August 2016.
11. In addition to the above, the Council (in their appeal statement) found that no harm would result from the development and recommended five planning conditions be imposed. However, I have concluded in my appeal decision that the condition relating to noise from the operation of equipment associated with the development fails the tests as set out in paragraph 206 of the National Planning Policy Framework.
12. I also note that the Appellant was still seeking longer hours of operation than what the prior approval permission allowed, which could only be determined through the consideration of a planning application or appeal. Whilst I have

¹ 2015/3930

² under Part 4 Class D of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

not found in favour of the Appellant on this matter, it remained a matter to be considered.

Conclusion

13. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and therefore a full award of costs is justified.

Costs Order

14. 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 Hackney shall pay to Clementine Gardens Property Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit the Council of the London Borough of Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Chris Forrett

INSPECTOR