The Planning Inspectorate

Costs Decision

Site visit made on 1 June 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 27 June 2017

Costs application in relation to Appeal Ref: APP/H5390/W/17/3170032
123 Godolphin Road, London W12 8JN

- 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 Patel for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
- The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted for change of use of ground and first floors from offices (Class B1) into 2 x one bedroom and 2 x two bedroom self-contained residential flats (Class C3).

Decision

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

Procedural Matter

2. I have taken into account the Government's Planning Practice Guidance (PPG), issued on 6 March 2014, in reaching my decision.

Reasons

3. The 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 or wasted expense in the appeal process.

4. The applicant claims that the Council acted unreasonably by failing to: properly interpret their own development plan policies, thereby preventing/delaying the development proposed by the application, which was in accordance with the development plan; have regard to evidence submitted by the appellant in support of the application, leading to the local planning authority making inaccurate assertions as to the impact of the proposed development; and to determine the application in a manner consistent with previous decisions.

5. The applicant raises concerns in respect of the Council not taking account of its Planning Guidance Supplementary Planning Document (the SPD) which sets out that residential conversions would normally be refused permission in streets where the level of on-street overnight parking exceeds the notional on-street overnight parking capacity. It also refers to that parking capacity being determined by surveys between the hours of 0300 and 0500 on a weekday night on the basis that such times have been identified as producing the normal maximum on-street overnight car-parking demand.

6. The survey information submitted by both the Council and applicant shows that the stress levels at the times of those surveys were less than the 80% figure referred to in the SPD over-night on weekdays. The Council referred to the very high stress levels found on weekend afternoons. However, that is not a time for which the SPD identifies surveys need to be conducted for the purposes of determining proposals such as that relating to this appeal. Furthermore, no qualification of those higher figures is provided in terms of the circumstances at the time such as the extent of parking restrictions or any local events going on.

7. The Council's highways officer made reference to the appellant's own parking survey in the consultation response. However, neither this nor the survey itself was referred to in the planning officer's report. It is therefore unclear as to whether those factors were appropriately taken into consideration in reaching the conclusions set out in the officer report.

8. The applicant refers to the Council not taking account of another appeal decision Ref APP/H5390/A/11/2161721 where my colleague found that similar conditions were unnecessary. However, I do not have full details of that case, including the survey documents referred to, which also relates to a different location. Based on my colleague's reasoning set out in that decision, the matter of when surveys were carried out or the extent of coverage for those surveys was also not at issue. The circumstances were therefore different to this case. However, this does not deflect from my concerns in those other respects referred to above relating to the Council's behaviour in determining the application.

9. The Council stresses that the applicant had previously accepted the conditions concerned and demonstrated this by submitting details for approval pursuant to conditions 2 and 4 of the original permission. That does not however negate the applicant's entitlement to apply for the removal of those conditions based new survey information.

10. In conclusion, for the above reasons, I find that the Council behaved unreasonably in determining the application and that, therefore, the applicant's costs in pursuing the appeal were unnecessarily incurred and wasted. For this reason, a full award of costs is justified.

Costs Order

11. 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 J Patel, 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.

12. Mr J Patel is now invited to submit to the Council of 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.

Andrew Dawe

INSPECTOR