
Costs Decision

Site visit made on 5 June 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 28 June 2017

Costs application in relation to Appeal Ref: APP/N5660/W/17/3170337 Broomwood Hall School, 3 Garrads Road, London SW16 1JZ

- 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 Broomwood Hall School Ltd for a partial award of costs against the Council of the London Borough of Lambeth.
 - The appeal was against the refusal of planning permission for the erection of an extension to provide a multi-purpose dining hall, kitchen, three classrooms, lift and ancillary facilities.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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. The PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal.
 3. The basis of the appellant's application for costs is on the grounds that the Council considered that the submitted sunlight test did not take into account the presence of trees. However, it was articulated to the Council that the Building Research Establishment (BRE) Report 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' states in Appendix H that '*in assessing the impact of buildings on sunlight in gardens trees and shrubs are not normally included in the calculation unless a dense belt or group of evergreens is specifically planned*'. The reason provided in the BRE Report for this is partly because the dappled shade of a tree is more pleasant than the deep shadow of a building.
 4. In addition the Council required the submission of a Transient Shadow Analysis even though the requirements of the Sunlight Amenity Test, which is an objective means to assess the loss of sunlight, were satisfied. The appellant had articulated to the Council that the approach of Transient Shadow Analysis was a subjective analysis tool that was out-of-date and not in line with current industry standard.
 5. Despite the appellant's responses above to the issues identified by the Council with regard to sunlight and daylight, the Officer's report identified that the sunlight impacts had not been demonstrated and that the proposals may result
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in unacceptable sunlight impacts and overshadowing impacts to No 1 Garrads Road but no objective evidence supported this assertion. As a consequence the appellant incurred unnecessary expense in providing additional technical evidence in a revision to the Daylight and Sunlight Assessment to include a Transient Shadow Analysis. This did not alter the conclusions reached in the Sunlight Amenity Test.

6. The Council indicate that in requiring a Transient Shadow Analysis it was mindful of the guidance provided in paragraphs 3.3.12 and 3.3.13 of the BRE Report which states that *'for critical areas, particularly in public open spaces, it is suggested that a more detailed study of sunlighting potential be carried out, using a prediction tool such as one of the sunpath indicators...(pg.3.3.12) Where a large building is proposed which may affect a number of gardens or open spaces it is often illustrative to plot a shadow plan showing the location of shadows at different times of the day and year...(pg.3.3.13)'*.
7. The Council suggest that as the proposed development was a large building which would affect a number of gardens, those of Flats 1 and 4 and part of the communal garden, at No 1 Garrads Road then the above guidance would be applicable and it was therefore reasonable for the additional prediction tool by means of the Transient Shadow Analysis to be provided.
8. With regard to the issue of trees, this was addressed by the inclusion of additional paragraphs in the revised Daylight and Sunlight Assessment dated 22 November 2016. The Officer's report did not identify that the non-inclusion of the trees in the Assessment was a factor that contributed to its concerns regarding the impact of the proposed development on daylight and sunlight. In my view, the Council accepted the clarification provided in the revised Assessment which, other than providing additional paragraphs, required no further analysis to be undertaken. This was a matter of clarification provided during the consideration of the application by the Council which was not thereafter referred to in the reasons for refusal.
9. With regard to the issue of the Transient Shadow Analysis the Council identified that the proposed development was of the type referred to in paragraphs 3.3.12 and 3.3.13 of the BRE Report and were also guided by the advice in paragraph 3.3.5 which identifies that *'Poor sunlighting of outdoor spaces only occurs with certain forms of layout. If a long face of a building faces close to due north then there will be an area adjoining the building, which is permanently in shade at the equinox (and hence all winter). Areas slightly further from such a building face will only receive sunlight for a limited time at the beginning or end of the day'*.
10. I agree with the Council that the circumstances identified in the BRE Report can be argued to be representative of the circumstances in this appeal. Therefore, I do not consider it unreasonable that the Council wished to understand the implications of shadow in the assessment of the impact of the proposed development based on its interpretation of the guidance provided in the BRE Report.
11. I recognise that there is a difference of opinion between the Council and the appellant regarding the interpretation of the BRE Report. However, the Council had reasonable concerns, related to Policy Q2 of the Lambeth Local Plan 2015, that the proposed development could cause unacceptable shading based on its interpretation of the advice provided in the BRE Report. These concerns were

- set out in paragraph 8.10 of the Officer's report which clearly referred to the guidance in the BRE Report in supporting why it was considered that the submission of a Transient Shadow Analysis was necessary.
12. Consequently, in the absence of a Transient Shadow Analysis at the application determination stage, I do not consider that the Council acted unreasonably in identifying the proposed development may result in unacceptable sunlight loss and overshadowing to the amenity space of No 1 as one of the reasons for the refusal of planning permission.
 13. Taking these matters into account, I find that the reasons for the refusal of the planning application were complete, precise, specific and relevant to the application. Based on the guidance provided in the BRE Report, I have found that the Council had reasonable concerns that the proposal may have result in unacceptable sunlight loss and overshadowing to the amenity space of No 1. Notwithstanding the subjectivity of a Transient Shadow Analysis, it is nevertheless a form of assessment tool that the BRE Report advocates in circumstances where development of long north facing buildings is proposed.
 14. The absence of the Transient Shadow Analysis to enable further assessment of the impact of shadowing was a justifiable concern that contributed to the decision to refuse the application. Accordingly, I do not find that the Council failed to properly consider the merits of the Sunlight Amenity Test or failed to produce evidence to substantiate its reason for refusal that the proposals may result in unacceptable sunlight impacts and overshadowing impacts.
 15. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified.

Stephen Normington

INSPECTOR