
Costs Decision

Site visit made on 5 June 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 4 July 2017

Costs application in relation to Appeal Ref: APP/R5510/W/17/3171606 12-14 Bentinck Court, Bentinck Road, West Drayton UB7 7RQ

- 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 Peter Ward (Keymat Technology Ltd) for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Paragraph O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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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 (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.
 3. This application for costs is brought on the grounds that firstly, the Council failed to produce evidence to substantiate its reason for refusal, and secondly that the Council failed to determine similar cases in a consistent manner.
 4. The planning application that led to this appeal was refused on the basis of the lack of on-site car-parking. For this type of prior approval application the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) sets out the criteria against which such applications can be assessed, which include, amongst others the transport and highways impacts of a proposed development. Paragraph W (10)(b) also establishes that the policies of the National Planning Policy Framework (the Framework) must be taken into account in the determination of prior approval applications "so far as relevant to the subject matter of the prior approval, as if the application were a planning application".
 5. In terms of the current application, my attention has been drawn, in particular to paragraph 32 of the Framework, which amongst other things establishes that decisions should take account of whether "safe and suitable access to the site can be achieved for all people" and that "development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe".
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6. In the current case, both the Council and applicant concurred that some overspill parking could be caused by the proposed development. The applicant supplied Transport Technical Notes, based on an established and robust methodology that assessed both the likely level of on-street additional parking demand that the proposed development would create, and the ability of on-street spaces in the surrounding area to accommodate this. The evidence concluded that due to the number of available on-street parking spaces within the appeal site's surroundings the proposed development would not lead to undue stress on their availability.
7. Whilst it is clear from the Officer Report on the scheme that the applicant's evidence in this respect has been taken into account, no compelling substantiated evidence has been presented by the Council to add weight to its assertion that the maximum parking standards set out within Policy AM14 of the Hillingdon Unitary Development Plan (adopted 1998) (the UDP), of 1.5 spaces per dwelling, or indeed a requirement of 1 space per dwelling should be adhered to in this scheme, or how any minor increases in parking that could arise from the use of these figures as opposed to those included within the applicant's Transport Technical Note would add to pressure for on-street parking in the area to the extent that it would not enable safe or suitable access to the site, or result in severe transport impacts. For these reasons, I find that the Council did not establish a robust evidential base to substantiate its reason for refusal.
8. I have been referred by the applicant to a previous appeal decision¹ in the Borough following the Council's refusal of prior approval for a change of use. In their decision the Inspector concluded that "Although the development plan policies referred to by the Council are noted, they do not demonstrate or substantiate an adverse impact in respect of transport and highway matters." Whilst I note that each planning proposal needs to be considered on its own merits, and that the development plan is a material consideration in the determination of applications for prior approval, the previous decision is nevertheless a material consideration of some weight and importance given the similarity of its subject matter. I therefore consider that in its failure to substantiate adequately its reason for refusal in terms of the severity of highways impacts of the scheme, the Council did not demonstrate that it had determined the planning application in a manner consistent with this previous appeal decision.
9. As a result, I consider that the Council acted unreasonably in its failure to produce evidence to substantiate its reasons for refusal, and in doing so it did not demonstrate that it had determined similar cases in a consistent manner. I find therefore that unreasonable behaviour, resulting in unnecessary or wasted expense in the appeal process, as described in the PPG has been established in this case and that a full award of costs is justified.
10. Consequently, for the reasons given above, and having regard to all other matters raised, this application for costs succeeds.

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,

¹ APP/R5510/A/14/2222105

and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Hillingdon shall pay to Mr Peter Ward (Keymat Technology 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.

12. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

G J Fort

INSPECTOR