



Costs Decision

Site visit made on 19 June 2017

by **D. M. Young BSc (Hons) MA MRTPI MIHE**

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/E5330/W/17/3171885 107a Plumstead High Street, Plumstead, London SE18 1SE.

- 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 William Hill Organization Ltd for a full award of costs against the Royal Borough of Greenwich Council.
 - The appeal was against the refusal of planning permission for a change of use from Class A2 (Financial and Professional Services) to Sui Generis (Betting Office). External alterations to the shopfront, installation of a satellite aerial and air conditioning units.
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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*" (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. The PPG also advises that local planning authorities are at risk of an award of costs if they unreasonably refuse planning applications by failing to produce evidence to substantiate each reason for refusal on appeal or use vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Furthermore, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
 3. The essence of the applicant's claim is that the Council behaved unreasonably by refusing planning permission without good cause and failing to produce any evidence to support its position. This caused the applicant to incur wasted expense in relation to pursuing the appeal.
 4. I have serious misgivings about the way the Council handled the planning application. It is apparent from the email chain between the parties that the applicant requested the Council's district centre survey on no less than 3 occasions in February 2017. The Council failed to acknowledge or respond to any of these requests. Whilst I can accept that sometimes emails can inadvertently go unanswered, I find it difficult to understand how this could have happened on 3 separate occasions.
 5. Despite these failings, the Council had another opportunity to produce the necessary evidence to support its position through the appeal process. However,
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it again failed to produce the survey or for that matter any substantial evidence to support its reason for refusal. As is evident from the Officer Report, the Council's own survey of the district centre was instrumental in its decision to refuse the application. Therefore the clear, abject and repeated failure to produce the survey leads one to speculate whether a survey actually exists.

6. The Council's response states that the applicant did not provide any evidence in relation to the 50% threshold at the planning application submission stage. However, the Planning Statement submitted with the application clearly states that further research on the levels of A1 uses in the district centre had been carried out to establish that 66% of the units were within an A1 Use Class¹. The Council failed to mention either the applicant's survey or the existence of the 66% figure in its Officer Report. I find this surprising since it was clearly a significant material consideration that went to the heart of the Council's decision.
7. I accept that it would have been preferable for the results of the applicant's survey had been included in the Appendix to the Planning Statement. However given how fundamental the matter was to the Council's decision, this could and should of been remedied by a simple phone call from the Case Officer to the applicant. It is also germane that the both surveys were submitted with the applicant's Grounds of Appeal at which time the Council could have taken stock of the situation and decided to withdrawn its objection in the face of such overwhelming evidence and its own failure to release its own data.

Conclusion

8. In this case I have found the Council's Officer Report to be bereft of objective appraisal and substantial evidence. The reason for refusal patently failed to stand up to scrutiny on appeal and in particular, the failure to produce the survey data to substantiate the reason for refusal means that the Council's decision was injudicious and relies on no more than vague and generalised assertions unsupported by appropriate analysis and evidence. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Royal Borough of Greenwich Council shall pay William Hill Organization Ltd, the costs of the appeal proceedings described in the heading of this decision.
10. The PPG makes it clear that the award of costs cannot extend to compensation for indirect losses or those that are unrelated to the appeal itself. With that in mind, the applicant is now invited to submit to the Royal Borough of Greenwich Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D. M. Young

Inspector

¹ Paragraph 3.5 of the NLP Planning Statement dated 22 December 2016.