
Costs Decision

Site visit made on 12 April 2018

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2018

Costs application in relation to Appeal Ref: APP/T5150/W/17/3181861 Turpins Yard, Oaklands Road NW2 6LL

- 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 Theme Traders Limited for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal of prior approval for change of use of storage and distribution centre (Use class B8) into residential (Use class C3) involving the creation of 2x two-bed residential units.
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Decision

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

Reasons

2. Planning Practice Guidance (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.
3. The appellants' application for costs was made in writing. Their arguments were based on the alleged unreasonable behaviour of the Council and wasted expense for a number of reasons.
4. One of the appellant's reasons for the costs application is the Council's failure to deal with the reason for refusal by way of a planning condition.
5. In respect of substantive matters an example cited in the PPG where costs may be awarded against a Council includes refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.
6. The option of dealing with the further intrusive site investigations issue by condition was suggested by the appellants, in their 'Covering Letter' in support of the application dated 4 May 2017.
7. Section W (13) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) allows local planning authorities to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. A condition to require more detailed investigation and necessary remediation as

suggested by the Environmental Health Enforcement Officer would be related to one of the matters for which prior approval may be required. Therefore, there would appear to be the power to incorporate a suitably worded remediation condition in this case. Furthermore, the condition could be worded to prevent any development approved from commencing until it has been complied with, due to the sensitive nature of the proposed use.

8. In this particular case, I have concluded that the appellants' prior approval appeal, which this costs application relates to can be supported subject to conditions, including one relating to detailed investigation and any necessary remediation.
9. In reaching the above conclusion I was also mindful that in the past the Council has supported residential development on the entire industrial yard area, that the appeal site forms part of, subject to a ground contamination condition. Moreover, I have not been provided with any substantive reason why such an approach could not have been taken with the appellants' prior approval application.
10. Given the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.
11. Having found that the award of costs is justified based on the above reason I have not given further consideration to the appellants' other key reason for the costs application.

Costs Order

12. 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 London Borough of Brent shall pay to Theme Traders Limited, the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to the Council of the London Borough of Brent, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Aqbal

INSPECTOR