
Costs Decision

Site visit made on 28 August 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st October 2019

**Costs application in relation to Appeal Ref: APP/F5540/W/19/3231099
The Little School Daycare Ltd, 42-43 Boston Park Road, Brentford,
Middlesex, TW8 9JF**

- 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 Mrs Harbir Randeva (The Little School Daycare Limited) for a full award of costs against the Council of the London Borough of Hounslow.
 - The appeal was against the refusal of planning permission to not comply with a condition attached to planning permission Ref 00134/42-43/P12 which was for the erection of a first floor extension to provide office and storage space and conversion of part of ground floor to provide sensory room.
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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 expense in the appeal process. The PPG goes on to advise that unreasonable behaviour in the context of an application for an award of costs may be either procedural, or substantive.
3. The applicant contends that the 'reason' for the condition imposed on the original planning permission¹ (the original planning permission) was to protect privacy at the adjoining site. However, they state that the reason for refusal on the Council's decision notice relating to this appeal was unrelated to the reasons associated with the condition within the original planning permission, thus the Council have sought to widen the scope of the intention of the condition beyond that specified on the decision notice¹. It is also put to me that the condition should never have been imposed on the original planning permission as it failed to meet the 6 'tests' as set out in paragraph 55 of the National Planning Policy Framework.
4. Whilst I appreciate that the reason for refusal did not include the word 'privacy' or any similar term, the Council's officer report stated that, "The removal of the requirement for obscure glazing would increase the level of overlooking at Churchill House. This relationship would fail to positively respond to the wider context of the area and its urban structure, form and function. It is therefore

¹ Planning permission reference 00134/42-43/P12 for the erection of a first floor extension to provide office and storage space and conversion of part of ground floor to provide sensory room.

considered that the proposal would compromise the existing and future operational needs and development of this neighbouring site". I am therefore satisfied that the Council adequately explained that, in their view, the proposed removal of the condition would result in an increase in overlooking, and subsequently affect the existing and future operational needs of the adjacent site, Churchill House.

5. However, as stated in my Section 78 appeal decision, I fundamentally disagree with the Council's reasoning. In coming to the view that they did, the Council failed to present specific policies or a robust explanation to demonstrate how the removal of the condition would unacceptably affect the existing or future operational needs of Churchill House.
6. I appreciate that the applicant also considers that the condition should not have been imposed on the original planning permission in the first place. However, the Section 78 appeal obligated me to consider the proposal before me, which was an appeal to remove a condition, as opposed to an appeal directly against the condition on the original planning permission, which I duly did.
7. Nevertheless, I consider that the Council failed to fully substantiate its sole reason for refusal with objective analysis. No further specific consideration or contextual justification in relation to privacy, overlooking, or how the proposal might otherwise affect the existing or future operational needs of Churchill House, was given. In these circumstances, whilst I consider that the applicant may not have been put to large amounts of additional expense in countering the Council's position on this single matter at the appeal, some unnecessary costs would have been incurred in making the appeal.
8. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

Conclusion

9. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

10. 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 Hounslow shall pay to Mrs Harbir Randeva, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to the Council of the London Borough of Hounslow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount, such costs to be assessed in the Senior Courts Costs Office if not agreed.

Matthew Woodward

INSPECTOR