



Costs Decision

Hearing Held on 29 October 2019

Site visit made on 29 October 2019

by Graham Wyatt BA (Hons) MRTPI

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

Decision date: 17 December 2019

Costs application in relation to Appeal Ref: APP/X5990/W/19/3221726 Westcourt House, 191 Old Marylebone Road, London NW1 5DZ

- 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 Whitbread Group PLC for a full award of costs against City of Westminster Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the redevelopment of the site to provide a 294 bedroom hotel (use class C1) alongside ancillary ground floor café/restaurant in buildings of 9, 10 and 13 storeys above ground.
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Decision

1. An award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the PPG) advises that 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 appeals process. The PPG further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally, the PPG is clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

The submissions for Whitbread Group PLC

3. The applicant argues that the Council acted unreasonably by refusing to grant planning permission on the basis that it was submitted with servicing from Harcourt Street (HS) and that it advanced vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant records the presentation of the planning application to the Council's Planning Sub-Committee whereby on each occasion the application was recommended for approval by Officers. Moreover, the Committee was advised that paragraph 109 of the National Planning Policy Framework (the Framework) states that permission should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5. The applicant acknowledges that elected Members are not duty bound to accept the recommendation of Officers. However, in coming to a contrary position, Members must demonstrate reasonable grounds for doing so and the reasons given within the Council's Statement of Case does not identify highway safety issues or expand upon how matters relating to air quality and neighbour amenity issues are considered severe or indeed how they would arise at all.
6. The applicant also argues that the Council has made vague and baseless arguments regarding the movement of HGV vehicles post development that would be required to service the proposed hotel. Moreover, no substantive evidence has been provided to support the proposition that serving of the site from HS would result in further harm to air quality in the area.
7. Thus, the Council has acted unreasonably and a full award of costs is justified.

The response by the City of Westminster Council

8. The Council state that the elected Members of the Council are entitled to disagree with Officers and its reasons for refusing planning permission are clearly set out within its written statement. Moreover, it is clear that the applicant accepted that servicing from Old Marylebone Road (OMR) represented a reasonable alternative to HS and submitted detailed information to demonstrate such an arrangement. Indeed, the applicant was not bound to relocate the servicing and could have requested that the Council determine the application based on the original submission of serving from HS, which would have also overcome the Mayor of London's (MoL) objection through the Greater London Authority to the use of OMR. Furthermore, the reasons for objecting to the development was not based solely upon the impact of the development on the road network, but also included the loss of a street tree.
9. In addition, while the Council accepts that the development would result in a reduction in traffic movements, this is based upon a comparison to the use of the existing building as commercial office space. However, as this building is vacant and it is unlikely that such a use could resume at the site and the applicant has not provided any evidence to demonstrate otherwise.
10. Therefore, the Council behaved reasonably in following the MoL's direction in refusing planning permission for the reasons as set out on its decision notice.

Reasons

11. The planning application as submitted by the applicant sought servicing from HS which Officers considered acceptable and was presented to the Council's Planning Sub-Committee on that basis. Matters evolved whereby the elected Members of the Council requested additional information regarding off-street servicing which the applicant demonstrated could not be provided. Servicing would be provided on HS with an additional taxi set-down bay on OMR. Consequently, the Council stated that it would be minded to grant planning permission subject to the on-street servicing being relocated on OMR and if necessary, the bay being enlarged through the loss of two Ginkgo trees.
12. I fully accept that the Council is not duty bound to follow the advice of its professional officers, or those of consultees, in determining applications for planning permission. However, where a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this

case, although the reason for refusal was at the direction of the MoL and not elected Members, it was nonetheless directly as a result of the Council requesting the relocation of the servicing arrangements via OMR.

13. Although I accept that the applicant was not required provide additional information regarding the possibility of providing servicing arrangements on OMR, it did so as a result of the Council's request. Nevertheless, while the applicant agreed to provide such information, the Council failed to substantiate upon its aversion to the use of HS. From the evidence that has been presented before me, I am not persuaded that it has been demonstrated sufficiently why the original servicing from HS would have caused severe highway safety issues to vehicles or other vulnerable road users including pedestrians and cyclists, as alluded to in the Council's written statement.
14. Moreover, the Council's written statement also raised amenity issues of residents through HGV's "*being directed onto and loitering in quiet residential streets*" and air quality issues that may also ensue. While I accept that air quality in the area is poor, these matters did not form the Council's reason for refusing planning permission and have not been expanded upon with the Council's written statements with substantive evidence how the development would impact on air quality and other amenity related issues raised by the Council.
15. In the absence of any substantially more detailed evidence in this case, it appears to me that in the planning judgement, having regard to the provisions of the development plan, national planning policy and other material considerations, the proposal should reasonably have been permitted without requiring the applicant to relocate the servicing arrangements to OMR.
16. On this basis, the refusal of planning permission must again be considered to constitute unreasonable behaviour contrary to the guidance in the PPG and the applicant has been faced with the unnecessary expense of lodging the appeal. Accordingly, I must conclude that an award of costs is justified.

Costs Order

17. 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 City of Westminster Council shall pay to Whitbread Group PLC, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the reason for refusal: such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to City of Westminster 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.

Graham Wyatt

INSPECTOR