
Costs Decisions

Hearing Held on 5 February 2020

Site visit made on 5 February 2020

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 2nd March 2020

Costs application in relation to Appeal Ref: APP/W1905/W/19/3225394 43 Turners Hill, Cheshunt, Waltham Cross

- 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 Fastgrand for a full award of costs against Broxbourne Borough Council.
 - The hearing was in connection with an appeal against the refusal of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for
 - "Change of use of listed building (No 43 Turners Hill) from an accountant's office (Class A2) to residential (Class C3) in the form of 2 x 2 bedroom flats;
 - External alterations to No 43 Turners Hill including removal of existing rear extension and creation of additional floorspace to rear;
 - Development of new 2 storey detached building adjacent to no 43 Turners Hill which will provide 2 x 1 bed flats;
 - Development of 4 x 2 bed terraced dwellings to the rear of No 43 Turners Hill, and
 - Associated works including new vehicle parking provision, hard/soft landscaping, residential amenity space, secure refuse and cycling storage."
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Costs application in relation to Appeal Ref: APP/W1905/Y/19/3225456 43 Turners Hill, Cheshunt, Waltham Cross

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Fastgrand for a full award of costs against Broxbourne Borough Council.
 - The hearing was against the refusal of listed building consent for
 - "Change of use of listed building (No 43 Turners Hill) from an accountant's office (Class A2) to residential (Class C3) in the form of 2 x 2 bedroom flats;
 - External alterations to No 43 Turners Hill including removal of existing rear extension and creation of additional floorspace to rear,
 - Development of new 2 storey detached building adjacent to no 43 Turners Hill which will provide 2 x 1 bed flats;
 - Development of 4 x 2 bed terraced dwellings to the rear of No 43 Turners Hill, and
 - Associated works including new vehicle parking provision, hard/soft landscaping, residential amenity space, secure refuse and cycling storage."
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Decision

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

The submissions for Fastgrand

2. The appellant contends that the Council failed to take into account a material consideration. Planning approval has recently been granted for redevelopment of 45 Turners Hill¹ for a new 3 storey building. In the appellant's opinion this would alter the context of the site. They also consider that the Council failed to consider like applications in a similar manner in failing to apply policy consistently to both the appeal proposal and the neighbouring site.
3. The appellant also considers that the Council failed to take proper account of the previous approval at the appeal site² in relation to the impact of the proposal on the significance of the listed building, particularly in relation to internal alterations. Finally, the appellant also considers that the failure to produce an agreed Statement of Common Ground was due to the Council's failure to cooperate in a timely manner.

The response by Broxbourne Borough Council

4. The Council respond that the application was subject to pre-application advice, when the Council's concerns in relation to the proposal were communicated to the appellant. The Appellant was also made aware of concerns during the application process and that this advice was consistent. The Council consider that as the adjoining site did not contain a listed building, and was determined only in the context of the setting of a listed building, the approach taken was not inconsistent.
5. Furthermore, the Council consider that the officer report and appeal statement clearly substantiate the Council's case. In relation to the matter of highways the Council state that Broxbourne Borough are the relevant authority in considering parking issues and so the Council's decision is not inconsistent with the advice of the Highways Authority.

Reasons

6. *Planning Practice Guidance* 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. The Council refused the planning application for 5 issues, one of which related to the effects of the proposal on the setting of the listed building, also the sole reason for refusal on the listed building application.
7. A large part of the appellant's case rests on the fact that the Council have approved a relatively large scheme next door to the appeal site, which is relatively dense in character, and which provides less parking provision than the appeal proposal. From the submitted Committee Report it appears that the Council had resolved to approve this scheme before the scheme before me was refused.
8. In relation to the effect of the proposal on heritage assets and the character of the area. The Council didn't take into account the potential changing context of

¹ Ref 07/19/0771/F

² Ref 07/16/1363/F & 07/16/1364/F

- the site as part of their assessment of heritage assets. Nevertheless, the Council's written case was clear and I am satisfied that as the scheme was considered to harm the significance of the heritage asset for other reasons, this omission would not have altered their consideration of the case.
9. In particular, the Council considered that the proposed terrace would impact on the setting of the listed building and that the side addition would be detrimental to character and appearance, thus harming the significance of the asset. I have not agreed with the Council's first concern, but share the Council's reservations as to the side addition, and I consider the Council's case to be well articulated and well founded. As this element does not form part of the previous scheme, I also find no inconsistency on the Council's part between the 2 proposals.
 10. In relation to the layout of the scheme, and its impact on living conditions, and the provision of waste storage. I have found myself in agreement with the Council on these matters and have concluded that the proposal would harm the living conditions of future occupiers. In this regard, the failure of the Council to refer to development on the adjoining site would not, to my mind, have altered their consideration of this case.
 11. Neither would the proposal on the adjoining site be likely to make any difference to the Council's consideration of the effect of the proposal on adjoining occupiers. Although I have not found in favour of the Council in this respect, this is a matter of planning judgement and it was not outside the bounds of reasonableness for the Council to have reached a different view in this case.
 12. In relation to the preparation of the Statement of Common Ground. The Council failed to engage cooperatively in this regard, as they did not respond in a timely manner and later sought to remove large sections of the draft document which appeared to relate to uncontroversial factual matters. Whilst this approach was not helpful, I have no evidence that in the event this led to unnecessary expense on the part of the appellant or led to undue delays in the determination of the appeal.
 13. Finally, in relation to the issue of parking, which formed the fourth reason for refusal for the planning application. The parties agreed at the hearing that the proposal would provide a deficit of spaces of around 2-3 spaces for a development of 8 properties, which the Council considered would be "substantial". This is at odds to the Council's consideration of development at the adjoining site, where a much lower provision was accepted. Given the proximity of the developments and the fact that they are likely to be subject to similar levels of parking pressure, the Council behaved unreasonably in not clearly justifying why different approaches had been taken to the two sites. Furthermore, I accept that this inconsistency was a matter on the which the appellant will have felt obliged to seek some clarity through the appeals process. In doing so the appellant will have had to support a case at appeal and so would have been likely to incur expense which could not have been avoided.
 14. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated and

that a partial award of costs, in relation to the fourth reason for refusal³, is justified.

Costs Order

15. 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 Broxbourne Borough Council shall pay to Fastguard, the costs of the appeal proceedings described in the heading of this decision insofar as they relate to the Council's fourth reason for refusal of application 07/18/0918/F, dated 13 November 2019⁴.
16. The applicant is now invited to submit to Broxbourne Borough 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. 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.

Anne Jordan

INSPECTOR

³ Planning application ref 07/18/0918/F

⁴ The Decision Notice is dated in error and should read 13 November 2018.