



Costs Decision

Hearing Held on 2 October 2019 and 22 January 2020

Site visit made on 22 January 2020

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Costs application in relation to Appeal Ref: APP/A5270/W/19/3227828 134-136 Broadway, West Ealing W13 0TL

- 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 Mr Shahram Sabbaghi of Bower Terrace Ltd for a partial award of costs against the Council of the London Borough of Ealing.
 - The hearing was in connection with an appeal against the refusal of planning permission for construction of a part five-storey and part six-storey building comprising 19 flats, 17 x one bedroom, 1 x two bedroom and 1 x studio; A1 shop unit on ground floor (following demolition of the existing buildings).
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Decision

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

The submission for the applicant

2. The applicant's submission for costs was made in writing and orally at the hearing. The Council's response was also made orally at the hearing and added to in writing following the event as was the applicant's reply.

Reasons

3. The National 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.
4. PPG gives examples of unreasonable behaviour by local planning authorities which may result in an award of costs. This includes introducing fresh and substantial evidence at a late stage necessitating an adjournment or extra expense that would not have otherwise arisen.
5. The applicant refers to the submission of a fresh viability review shortly before the first day of the Hearing. As a result of the amount of information provided, the Hearing was adjourned to allow time for it to be considered. The costs of the second day of the Hearing are sought on this basis.
6. The Council commented that the main parties were seeking to avoid the appeal by holding discussions with the applicant on the alternative, pending application at the site. However, after an agreement could not be reached

regarding contributions being sought, the planning appeal proceeded. Only then were Barton Wilmore instructed by the Council to provide a reply to the applicants viability case. This gave only a few weeks for Barton Wilmore to give their evidence.

7. The Council refer to this evidence updating construction cost with an inflation uplift. Also, that this report identified that the errors in the figures and floor areas used by the applicant. I appreciate that the Council were seeking to pursue the pending application at the site that was running concurrently with the appeal. The additional information submitted shortly before the first day of the Hearing may have raised points leading to an amendment of the viability evidence.
8. Nonetheless, this does not remove the need to abide by the appeal timetable and the timing of Barton Wilmore being constructed was within the control of the Council. Had the information been provided in accordance with the timetable set out, it would have still required the applicant and their advisers to read and respond to the information. However, this would have given sufficient time for this to be done, and for myself to fully digest the information, prior to the Hearing. Therefore, it would not have required it to have been adjourned and the applicant would not have incurred the costs associated with the second day of the Hearing. The submission of the details shortly before the hearing was unreasonable.
9. Costs for works relating to the drafting and executing of a unilateral undertaking a late stage review mechanism are also sought. This is again due to the applicant considering it to be unreasonable for this to be requested after the submission of the statements of case and only shortly before the reconvened hearing.
10. It is unclear why the Council did not raise this matter earlier. Had they done so the late stage review could have been included in the original undertaking and a further one would not have been necessary. This would have prevented the applicant incurring the costs associated with providing a new undertaking to include the review mechanism.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

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 Council of the London Borough of Ealing shall pay to Mr Shahram Sabbaghi of Bower Terrace Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred for the second day of the Hearing and the provision of a unilateral undertaking to include a late stage review after the Hearing.
13. The applicant is now invited to submit to the Council of the London Borough of Ealing, 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.

Stuart Willis

INSPECTOR