The Planning Inspectorate

Costs Decision

Site visit made on 11 February 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2020

Costs application in relation to Appeal Ref: APP/Z5630/W/19/3237459 Underground Car Park at Kingston Riverside, 1 Henry Macaulay Avenue, Kingston, Kingston upon Thames KT2 5FE

- 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 Premier Ground Rents No5 Ltd. for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for Variation of Sections 27 and 39 of the Unilateral Undertaking of planning application 06/12424/FUL allowed on Appeal APP/Z5630/A/07/2062354/NWF (as amended by applications 09/12648/NMA, 12/12223/NMA, 12/12574/NMA & 14/12118/NMA) to replace the existing Car Park Management Plan.

Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. Local planning authorities are at risk of an award of costs against them where there is evidence of preventing or delaying decisions. The PPG advises that, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit.

4. The application was validated on 21 March 2019 generating a deadline of 16 May 2019 for its determination. There is no firm evidence to suggest an extension of time was requested by either party on the expiry of that deadline, however, it is clear from the main party's submissions that no such agreement occurred. Although the Council advise that the applicant was made aware of its operational difficulties at the time of the planning application, there is little evidence to that effect until after the registration of the appeal.

5. For the purposes of the appeal, the Council provide clarification that delays were consequent to high officer caseloads and staff shortages. It is also apparent that a change in case officer took place in August 2019 just prior to the submission of the appeal.

6. The applicant has provided evidence of email correspondence requesting updates from the Council on matters in relation to the application dating from 5 June 2019 onwards, some 3 weeks after the statutory deadline for determination. Exchanges were made on 19 June 2019 to address the Council's concerns in relation to a potential requirement for planning permission for non-resident parking. This matter was swiftly resolved between the main parties and an amendment to the Car Park Management Plan (CPMP) provided.

7. The applicant's evidence showing subsequent correspondence over the following 2 months appears somewhat one-sided. Several attempts by the applicant's representative to prompt the Council and provide updates were apparently not responded to. This is not contested by the Council.

8. Whilst I appreciate that staff resourcing can cause delays in delivering timely decisions it is incumbent on the Council, as the local planning authority, to fulfil its planning function without unreasonable delay. Where delays are unavoidable these should be explained clearly to the applicant and engagement, even at the basic level, should continue to take place to meet the requirements of paragraph 38 of the National Planning Policy Framework.

9. From the evidence before me, it appears that the extent of the delay and lack of communication was sufficient to constitute unreasonable behaviour on the part of the Council and that behaviour has led to the necessity for the applicant to register an appeal.

10. For the purposes of the appeal, the Council have advised that it has concerns over the effect of the proposed CPMP. These relate to the potential effects of the changes on on-street parking pressures arising from displacement of spaces and price charging, and the consequential impacts to highway safety in the locality.

11. The PPG makes it clear that a local planning authority is also 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. Notwithstanding my finding in respect of the appeal, in its duty to consider the proposed variation of the unilateral undertaking, the Council's response has failed to provide such objective analysis of any existing parking pressures, and, if they exist, how they would be made worse by the development and/or affect highway safety.

12. Furthermore, the Council's statement also fails to acknowledge the requirement under s38(6) of The Planning and Compulsory Purchase Act 2004 to determine against the development plan. The absence of any references to the local development plan, or other points of reference, to support the stated concerns is significant in this regard.

13. Concern was also expressed by the applicant in respect of the ability to view consultation responses and I understand the Council provided clarification to the applicant on this point. However, there is little evidence to demonstrate that if formal requests to view them were made or actioned. In the absence of clear evidence on the matter, this holds little weight in this determination.

14. Despite the Council's difficulties in staffing, I find that the degree of delay and absence of engagement with the applicant was unreasonable and consequently

the applicant was left with little choice but to register the appeal. The subsequent failure to provide sufficient substantive evidence to support their stated concerns also amounts to unreasonable behaviour on the part of the Council. For those reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that an award of costs 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 the Council of the Royal Borough of Kingston-upon-Thames shall pay to Premier Ground Rents No.5 Ltd. the costs of the appeal proceedings described in the heading of this decision.

16. The applicant is now invited to submit to the 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.

R Hitchcock

INSPECTOR