



Costs Decision

Hearing Held on 10 March 2020

Site visit made on 10 March 2020

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2020

Costs application in relation to Appeal Ref: APP/Y5420/W/19/3232707 Ashley House, Ashley Road, Tottenham, London N17 9LZ

- 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 Notting Hill Home Ownership for a full award of costs against the Council of the London Borough of Haringey.
 - The hearing was in connection with an appeal against the refusal of planning permission for the demolition of existing buildings and erection of a part 6, part 8 storey building to provide 97 residential units (Class C3), 170 sqm of commercial floorspace (Class A1/A3/B1), new public realm, car and cycle parking and all associated works.
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Decision

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

The submissions for Notting Hill Home Ownership

2. The application was done in writing prior to the Hearing, although a verbal overview was provided at the Hearing, with some response to Council comments.
3. The applicant for costs highlights four main areas which are argued are reasons for an award. Firstly, that the planning application was in accordance with planning policy and should have been approved, thereby avoiding the need and cost of an appeal. Connected to this is the substantial pre-application process and the Planning Officer's report recommending approval to the Planning Committee, who then refused the application. The applicant also state that this decision is inconsistent with other planning approved development in the area.
4. Secondly there is the issue of the housing land supply. The applicant wanted an Inquiry for the appeal, but the Council contended that a Hearing would be sufficient. Subsequently, following another appeal in the area which concluded that the Council had marginally less than the required 5 year land supply, the Council released their Annual Monitoring Review (AMR) just before the original Hearing date for this appeal. This left little time for the applicant to thoroughly respond to this information, which they suggest was not sufficiently backed up by evidence to show the Council now had a 5 year housing land supply. The applicant has also stated that the Council has since retrospectively updated their evidence of potential sites for housing.

5. The applicant state that there were substantial delays in Council responses to the joint production of the Statement of Common Ground and also the S106 legal agreement.
6. Finally, the applicant has stated that the failure of the Council to appropriately notify local residents or other interested parties of the appeal Hearing date, time and location has led to a significant delay and related costs, such as additional professional fees due to the postponement of the Hearing.

The response by the Council of the London Borough of Haringey

7. The Council responded in writing and also provided more information verbally at the Hearing to the costs application.
8. Firstly, the Council state that it is procedurally and lawfully correct for the Planning Committee to form their own judgement on the proposals, which were contrary to the Planning Officer's recommendation. They also state that the issues are largely subjective and also that each case should be assessed on its own merits.
9. The Council indicate that the release of the AMR close to the initial Hearing date was not planned and that evidence showed they had more than the required 5 year housing land supply.
10. The Council refute that they caused significant delays due to the time taken to respond to the Statement of Common Ground correspondence from the applicant.
11. The Council state that it was human error for the notification letters not being sent out, but this would not have led to additional costs being incurred by the applicant. They also point out that it provided more time to address the issue of housing land supply and that the Hearing would either have had to be adjourned and or extended anyway.

Reasons

12. Advice over the award of planning appeal costs is set out in the Government's Planning Practice Guidance (PPG). It states the established premise that parties to an appeal normally meet their own costs. However, the PPG advises that, irrespective of the outcome of the appeal, 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.
13. In regard to the decision, the applicant has highlighted the matter of the Planning Committee overturning a recommendation for approval from the Planning Officer. However, it is the right of the Members of the Planning Committee to consider the recommendation of their professional officers and consultees but decide to come to a different view, as happened with this case.
14. The Planning Committee did not agree that this is a development that should be supported in this instance, due to their concerns, including that of housing mix and play space provision, which is not something that could probably be overcome by condition. On the point of inconsistencies, the Council has explained why some of the other approved development sites were approved with lesser family sized units, for example. In this regard I do note that the

other developments are all slightly different from that proposed with this appeal and each case should be assessed on its own merits.

15. Whilst I have not reached the same conclusion as the Planning Committee, I do not regard their behaviour in coming to this conclusion as unreasonable, with the consideration of the issues being to some extent subjective. I note the housing mix suggested in the Council Framework document for development of this area, but this was not binding on the Committee.
16. I recognise the issues with the timing of the AMR release for this Hearing. The issue of housing land supply took a significant amount of time for the applicant to go through, but this was part of the process of building their case that the Council could not demonstrate they had sufficient housing sites. As I understand it, whilst the applicant does not consider much of the Council evidence as sufficient for many of the sites to be included, the applicant did obtain the evidence it needed by the time of the Hearing. Furthermore, I do not regard it as being sufficiently demonstrated that the Council retrospectively updated evidence in a way that is tantamount to unreasonable behaviour and would have resulted in additional costs to the applicant.
17. I have considered the evidence relating to the production of the Statement of Common Ground, recommended conditions, and the legal agreement. From what I have seen and heard at the Hearing, although they might have taken some time in the Council responding to applicant correspondence the Statement of Common Ground and the S106 Legal Agreement have both been produced and agreed between the parties in full, prior to the Hearing. Therefore, I do not regard the Council behaviour in this regard as unreasonable.
18. Finally, there is the issue of the notification of the Hearing time, date and location not being sent out to potentially interested parties. It became apparent that the requisite notice had not been given by the Council a few days prior to the Hearing. Having considered the views of the parties, I could not be satisfied that prejudice would not occur to any other parties who could have an interest in the appeal proposal. Whilst there had not been much previous comment from the general public to the proposal previously, this did not necessarily mean there would be no interest in attending the Hearing. I therefore postponed the Hearing.
19. Unfortunately, the Hearing had to be postponed a second time, although this was due to myself, as Inspector, not being able to attend. I do not regard the Council as being at fault for this second postponement.
20. However, whilst I acknowledge that the Council's failure to undertake the correct notification was not intentional and likely a case of human error, it nonetheless amounted to unreasonable behaviour that lead directly to the postponement of the Hearing at short notice. As such, the costs incurred by the applicant in preparing for the postponed Hearing on 11 December 2019 and then subsequently to organise and prepare again to attend on 10 March 2020 resulted in wasted expense.
21. This postponement did allow more time for both parties to address the issue of housing land supply, but it was clear that the appellant was set for the December Hearing date and had not requested more time for consideration of information before them. As such, there is no substantive evidence that the

delay was something that the appellant wanted. Furthermore, it is not certain that due to evidence of housing land supply being assessed by the parties that there would have to be an adjournment to a later date anyway if the original Hearing had taken place.

22. Nonetheless, there was the postponement and the appellant had to prepare and assemble again at a later date, which considering professional fees particularly, would have incurred some costs.
23. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has therefore been demonstrated and as such a partial award of costs is justified in this case.
24. I conclude that a partial award of costs, to cover the expenses incurred by the applicant due to the need to prepare and plan for a subsequent Hearing date due to the postponement of the original event, as a result of a failure of the Council to notify local residents, is justified.

Costs Order

25. 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 Haringey shall pay to Notting Hill Home Ownership the costs of the appeal proceedings, limited to those costs incurred arising following the postponement at short notice of the Hearing on 11 December 2019 and the additional preparation required for the subsequent appeal Hearing on 10 March 2020.
26. The applicant is now invited to submit to the Council of the London Borough of Haringey, 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 are to be assessed in the Senior Courts Costs Office if not agreed.

S. Rennie

INSPECTOR