



Costs Decision

by **Darren Hendley BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 May 2020

Costs application in relation to Appeal Ref: APP/F5540/W/19/3243811 78 Upper Sutton Lane, Hounslow TW5 0PT

- 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 Gurpal Singh Gill, Beacon Care Services for a full award of costs against the Council of the London Borough of Hounslow.
 - The appeal was against the refusal of planning permission for the proposed creation of nine self-contained flats (six studio flats and three one-bedroom flats), a communal lounge, a manager's office and a residents' gym on the first and second floors in place of the approved development of eight self-contained flats, together with alterations to planning permission 01143/78/P8 to allow retention of the elevations and footprint as built. Drawing Numbers: Planning Statement by DLP; Design and Access Statement by DLP; Location and Block Plan; 013/PL04 Rev B; Received 02/12/2015; 013/PL02 Rev D; 013/PL03 Rev G; 013/PL05; 013/PL07 Rev A; ; received 23/03/2016 without complying with a condition attached to planning permission Ref: 01143/78/P16, dated 5 December 2016.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. The applicant's costs claim is based on three grounds, namely that the Council has failed to carry out a proper assessment and give due regard to the government guidance in assessing the validity of the condition subject of the variation; highway safety had already been assessed when the permission was granted for the initial application for the development of the site without a Section 106 agreement under the Town and Country Planning Act 1990; and, an unnecessary appeal has had to be lodged resulting in substantial costs, which could have been avoided.
4. On the first of these grounds, the applicant has pointed out that the crossover is pre-existing and it was used to serve the public house prior to the development taking place. The Council have, though, detailed their pedestrian safety concerns which arise with the development compared to the public house and why a different surfacing material would be needed in this regard. Moreover, the purpose of the Council's Appeal Statement is to amplify the

matters which are set out in the reason for refusal and this is satisfactorily achieved as a proper assessment.

5. The applicant's concern over government guidance and the validity of the condition relates to that it would result in works taking place outside of the site boundary. The National Planning Policy Framework (Framework) and the PPG, however, do not prevent the use of such a condition. Whether it would be reasonable and necessary depends on the particular circumstances, as I have set out in my appeal decision.
6. The condition was deemed necessary by the Council in the interests of highway safety as pedestrians would be crossing the access which vehicles associated with the development would also be utilising. That the land in question lies outside of the applicant's control does not make the condition invalid because the Highway Authority, who control the land in question, consider that the works need to be carried out.
7. The applicant also considers that the condition is positively worded, contrary to advice in the PPG. The condition does, though, require that prior to the occupation of the flats the details of the highway works are to be submitted to and approved in writing by the Local Planning Authority and requires their completion no later than 3 months after the first occupation of any flat. The Council's position is not, therefore, unreasonable in these respects.
8. Moving onto the second grounds, highway safety remains a relevant consideration as this was the reason the condition was imposed. An application to vary such a condition also needs to be considered in the same way, and this formed the basis of the Council's deliberations. The Council was also not unreasonable in dealing with this matter through a condition rather than through a Section 106 Agreement, as both the Framework and the PPG would favour this approach in these circumstances.
9. Nor does the evidence suggest that the Council has ignored national policy. The Council's Appeal Statement refers to the relevant provisions of the Framework which relate to highway safety, even if the Framework is not contained in the reason for refusal. In any event, local and national policy seem consistent on the issues that are relevant to the appeal.
10. As regards the payment that the applicant has made under the Community Infrastructure Levy Regulations (CIL), this is not designed to make development that is the subject of an individual planning application acceptable in planning terms. As the Council is not attempting to gain the same contribution twice, but seeking to ensure that the development satisfactorily addresses highway safety matters, separate to the CIL payment, this is also not unreasonable.
11. On the third grounds, when these factors are taken together, it is not the case that the Council's actions have caused the applicant to lodge an unnecessary appeal. The costs incurred could not have been avoided. Nor is there sufficient justification to make a partial award because the Council has not acted unreasonably with regard to any of the applicant's grounds.

Conclusion

12. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not, therefore, justified.

Darren Hendley

INSPECTOR