



Costs Decision

Site visit made on 22 June 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th July 2020

Costs application in relation to Appeal Ref: APP/N1920/W/20/3245680 TSG House, Cranbourne Road, Potters Bar, EN6 3JN

- 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 B Lees of TSG Building Services Ltd. for a full award of costs against Hertsmere Borough Council.
 - The appeal was against the refusal of prior approval required under Class O, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for the conversion of existing offices (B1a) to residential (C3).
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Decision

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

Reasons

2. Paragraph 16-028-20140306 of the Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant's assertion is that the Council prevented or delayed development which should clearly be permitted, did not follow well established case law and did not determine similar cases in a consistent manner. These are examples of behaviour set out in paragraph 16-049-20140306 that could give rise to an award of costs against a local planning authority.
4. As set out in my decision letter since this appeal was lodged an Article 4 Direction came into effect in April 2020 on the appeal site and surrounding land. This means that the proposed development cannot benefit from prior approval under Class O of Part 3 of Schedule 2 of the Town & Country (General Permitted Development) (England) Order 2015, and the appeal has been dismissed.
5. The appellant has referred me to findings in judgements¹ that give consideration to the duty of the decision maker in relation to proposals that are similar or that are indistinguishable from a previous one. These judgements also highlight the duty of the decision maker to have regard to relevant planning considerations in a given case. Notwithstanding, the appellant's

¹ North Wiltshire DC v SSE [1993] 65 P&CR 137 and Baroness Cumberlege of Newick & Anor v SSCLG & Anor [2017] EHCW 2057 (Admin)

- commentary on the legal judgements, as set out in the Planning Practice Guidance an award of costs relates to unreasonable behaviour that directly results in unnecessary or wasted expense in the appeal process.
6. This appeal proposal is the third application for prior approval under Part O at this site. The first application was refused due to concerns regarding contamination and noise. The second and third due to concerns about the use of the building on 29 May 2013 and highway concerns. The highway reason for refusal for this current third application sets out a greater number of concerns than for the second application. The reason for refusing this third application includes reference to the new access, new parking areas, swept path analysis, and allocation of spaces.
 7. The highway reason for refusal appears to be based upon the technical consultation response from the Highway Authority to this application. This was a material consideration that the Council should reasonably consider in reaching its decision on this third application. The appellant's application and Transport Statement (dated June 2019) (TS) does not provide adequate justification or technical evidence to address the concerns in respect of the new access, new parking areas and swept path analysis. This is understood to be the same TS as the appellant relied upon for the previous applications. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process is not demonstrated.
 8. As a matter of planning judgement, the Council reached the view that the appellant's declarations do not override the evidence before it, resulting in the concerns in respect of the use on 29 May 2013, such as the site/planning history and survey plans of the lower ground floor. This reason for refusal by the Council is the same as that raised to the previous application. Based upon the evidence before me, the appellant's evidence does not justify why the declarations override the other evidence in respect of the use of the building on the trigger date. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated.
 9. The reasons for refusal set out in the Council's decision notice are based upon sound planning matters that appear adequately justified based upon the evidence before it and before me in relation to this appeal. Therefore, it is not demonstrated that the Council prevented or delayed a development that should have been permitted.
 10. For these reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense incurred in the appeal process as described in the Planning Practice Guidance, has not been demonstrated.

Dan Szymanski

INSPECTOR