
Costs Decision

Site visit made on 9 June 2020

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th July 2020

Costs application in relation to Appeal Ref: APP/M5450/W/3245971 Land to the rear of 29, High Street, Wealdstone Harrow HA3 5BY

- 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 D Vakani for a full award of costs against the Council of the London Borough of Harrow.
 - The appeal was against the refusal of planning permission for "Partial demolition of existing underutilised structures and erection of single storey rear extensions to provide 1no. studio flat with associated private courtyard and associated works."
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Decision

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

Reasons

2. The 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. Paragraph 31 of the PPG states the unreasonable behaviour may be procedural or substantive.
3. Paragraph 32 of the PPG states that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense, which could be the expense of the entire appeal.
4. Paragraph 49 of the Planning Practice Guidance states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. The appellant states that the appeal was unnecessary, as the proposal complies with the development plan and that there were other considerations that the Council failed to take account of when reaching its decision. The appellant also states that in refusing the application, and not defending the appeal, has meant that expense has been incurred, which should not otherwise have arisen.
6. In relation to the third reason for refusal, the appellant has suggested that the Council should have requested further information at the validation stage of the application, and that any required additional information could have been the subject of a planning condition.

7. The reasons for refusal set out in the decision notice are complete, precise, specific and relevant to the application. They also clearly state the policies of the Harrow Core Strategy (2012), London Plan (2015) and the Harrow Development Management Policies Local Plan (2013), that the proposal would be in conflict with. These reasons have been adequately substantiated by the Council in its Officer Report. The Officer Report sets out how the Council considers that the proposal would result in harm to living conditions, the ability of the site to provide future residential units and the sustainability of the associated retail use and flood risk using the evidence submitted by: the appellant; the Council's observations; consultees and third parties.
8. In terms of the Council providing a statement of case, 'Section D.4 the appeal questionnaire' of the Planning appeals: procedural guidance, states that the Council should indicate on the questionnaire that it does not intend to send a full statement of case, if it decides to treat the questionnaire, and supporting documents, as its full representations on an appeal. This was highlighted correctly by the Council in the questionnaire and the Officer Report was provided, in conjunction with the supporting documents.
9. The Officer Report noted that the Drainage Authority had identified that the site was within fluvial flood zone 2 and 3 according to Environment Agency flood maps. The DA response also stated that although the proposed construction is not identified within any flood zone, the road 'High Street' & 'Headstone Drive' which are the main access to the proposed development are identified within surface water flood zone 3a and 3b according to our surface water flood maps and fluvial flood zone 2 and 3 according to Environment Agency flood maps, hence are at a highest risk of flooding.
10. The Drainage Authority had requested information on the basis of its siting adjacent to and within these zones. The information requested in relation to flooding was split into two parts and stated only the information for emergency planning purposes could be conditioned, whilst the other flood information could not. The Officer Report concluded that had other aspects of the proposal been acceptable, then this information would have been asked for prior to determination.
11. I note that the appellant provided an example appeal which was for a similar proposal, and the Inspector found that the Council's delegated report presented conflicting analysis of the proposal in relation to the reason for refusal. Whilst the case was nearby and was a material consideration, each case must be determined on its own merits and within its own context. Furthermore, the Council also provided another appeal which was dismissed on the same street, which it considered to be a material consideration for the determination of the application.
12. I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme, and therefore the appeal could not have been avoided. Although I have allowed the appeal, the Council had reasonable concerns about the impact of the proposed development which justified its decision.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Conclusion

14. For the reasons set out above, and having regard to all other matters raised, an award for costs is not justified and the application is refused.

D Peppitt

INSPECTOR