
Costs Decision

Virtual Hearing held on 2 September 2020

Site visit made on 3 September 2020

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Costs application in relation to Appeal Ref: APP/R5510/W/19/3243159 Land to the east side of Newport Road, Hayes, London

- 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 the Council of the London Borough of Hillingdon for a partial award of costs against Bugler Homes Limited.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing buildings and redevelopment to provide 24 residential units (14 x 1 bed, 8 x 2 bed and 2 x 3 bed) in a part three storey, part four storey building with associated car parking, cycle parking, access and refuse facilities.
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Decision

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

The submissions for the London Borough of Hillingdon

2. The submissions were made in writing. In summary, it is said that the appellant misled the Council into believing that the appeal would be withdrawn if an alternative scheme were approved by the Council following constructive discussions. Having done so, it was unnecessary and unreasonable for the appellant to pursue the appeal, which disregards the improvements that were established in the alternative scheme as immaterial. The appeal had no prospect of success.
3. The appellant raised concerns about aspects of the appeal at a late stage (reasons for refusal 2 and 4) when they could have been raised earlier. Late and selective evidence was submitted requiring the Council to work over the weekend. The appellant misled officers, then lodged a late and unreasonable costs application, supported by a selective and misleading chronology, and generally behaved in an aggressive and intimidating manner, to seek to prevent the authority maintaining a proper design refusal concern, and carrying out its proper development control function.
4. The fact that a party has a "right" of appeal is not a good reason to pursue it of itself without context – the fact that the right to make an appeal exists does not mean it should be maintained. The Council was not seeking to avoid the appeal but was determining the application before it on its planning merits, in a proper fashion, in accordance with its democratic processes.
5. It is an abuse of the planning process to use the threat of costs, having instructed a leading QC, unnecessarily, to argue a case on simple points at a hearing to pressurise a Council to withdraw legitimate reasons for refusal on

design grounds which have been maintained since the outset and were the subject of extensive negotiations.

6. This was contrary to Planning Practice Guidance (PPG) that all parties are expected to behave reasonably at all stages of the planning and appeal process and ensure that they provide all the required information by due deadlines. Failure to behave reasonably may give rise to an award of costs [Paragraph 7, PPG].
7. The aim of the costs regime is to: encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case; encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case; not to add to development costs through avoidable delay; discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections [Paragraph 28, PPG].
8. A partial award of costs is sought from either 6th July 2020 when the appellant wrote to PINS and misled the Council as to its position or such other date as the Inspector considers appropriate.

The response by Bugler Homes Limited

9. The response was made in writing. In summary, it is said that the Council indicated it would make an application for costs on 21 August 2020 and no good reason has been put forward for the late disclosure of that application during the hearing itself. There is no support in PPG for the Council's application – the appeal was necessary as the scheme would deliver a commercially preferable development to that supported by the Council. The existence of an alternative scheme does not affect the appellant's right to appeal. The question for the appeal is whether the appeal scheme is acceptable, not whether a better alternative exists. The Council itself notes that the appeal scheme is materially different to the fallback scheme. The appellant never indicated that the appeal would be withdrawn.

Reasons

10. The Planning Practice Guidance 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.
11. Although the Council may have had the impression that support for the alternative scheme would lead to withdrawal of the appeal, there is no written evidence before me to confirm this, nor is it relevant. The Council had a duty to consider the alternative scheme and duly did so in line with its obligations. This did not alter its obligations in respect of the appeal scheme, or the need for it to justify its reasons for refusal.
12. The late evidence referred to by the Council was in essence, a summary of the differences between the appeal proposal and the alternative scheme, which had recently received a resolution to grant planning permission from the Council. This was submitted a week before the hearing and was highly pertinent information that would need to be discussed. The Council had ample time to consider the document, the subject of which should have been entirely familiar

- to it. The Council was not prejudiced by the submission and it was not unreasonable for it to have been submitted. The Council chose to make a written response but could just as easily have dealt with the document during the hearing.
13. It is positive that a preferable alternative scheme had been negotiated between the parties during the course of the appeal but the right of appeal is unfettered by this. The appellant explained that the appeal scheme is commercially preferable to that of the fallback scheme and it was therefore, entitled to pursue this option. To do so, cannot be said to be unreasonable or unnecessary. The main issue in the appeal was a subjective matter and the appellant could not have anticipated, much less expected that the appeal had no prospect of success.
14. The appellant sought to resolve the outstanding issues throughout the course of the appeal and it was for the Council to evaluate its prospects of success in respect of each reason for refusal and to reconsider its case accordingly. There is nothing unreasonable about the appellant inviting the Council to concede issues in light of new circumstances, in this case the resolution to grant an alternative scheme. The Council should have been well aware of this situation and reconsidered its case after the resolution to grant without the need for the appellant to raise the matter.
15. It is unfortunate that both parties appear to have behaved in a less than constructive manner during the course of the appeal. The time and energy invested in peripheral issues, including costs applications, could have been more wisely employed in addressing the planning issues at hand. Nevertheless, there is no evidence before me to suggest that the appellant's conduct was unreasonable at any stage or that it resulted in any wasted expense for the Council.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Michael Boniface

INSPECTOR