



Costs Decision

Hearing held on 15 September 2020

Site visit made on 16 September 2020

by H Butcher BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2020

Costs application in relation to Appeal Ref: APP/B5480/W/19/3239402 222-226 South Street, Romford RM1 2AD

- 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 K Anderson for a full award of costs against the Council of the London Borough of Havering.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for re-development of existing commercial premises to provide mixed use development varying from 2 to 7 floors comprising 79 residential units and A1, A2 and A3 uses at ground floor, and basement car parking.
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Decision

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

Preliminary matter

2. It was agreed at the hearing that the cost application by Mr K Anderson would be dealt with by written representations.

Reasons

3. 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. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. The appellant alleges a lack of co-operation from the Council over a prolonged period of time. This includes a previous application for planning permission which was appealed against non-determination. It is stated that it was only once the appeal was registered that the Council started to engage with the appellant. This appeal then lapsed following positive feedback from the Council and a second application for planning permission was made. However, the appellant experienced further delays and new objections to this second scheme, which lead to a further appeal against non-determination. It is this latter appeal which this costs claim concerns.

5. There is limited evidence before me in respect of the Council's behaviour prior to the appeal before me. However, during the appeal process I witnessed a general lack of co-operation from the Council. The PPG requires local planning authorities to behave reasonably in relation to procedural matters at the appeal including agreeing a Statement of Common Ground in a timely manner. However, the Council failed to do this despite my requesting the same in a pre-hearing note.
6. The Council's case also lacked clarity and consistency. During the hearing new issues were raised such as a lack of disabled parking spaces which could have been addressed by condition, and a concern about the amount of open space provided changed into a discussion about the deliverability of landscaping and planting within the scheme. Furthermore, figures relating to housing delivery were changed during the proceedings, leading to an adjournment. This all prolonged the hearing causing it to overrun to a second day which was not scheduled.
7. In addition to this it transpired that there was no justification for requiring contributions towards a Bus Mitigation Strategy and Controlled Parking Zone. This is despite the appellant preparing a Unilateral Undertaking to that effect based on the Council's draft. This is another example of unreasonable behaviour as set out in the PPG, regardless of whether the appellant contested the contributions or not.
8. Taking all of the above into consideration I find that the Council behaved unreasonably during the appeal process by being untimely and not co-operating. The Council also caused unnecessary delays with new and inconsistent evidence. All of this led to additional expense for the appellant in preparing evidence both prior to and during the hearing.
9. Furthermore, given what I witnessed during the appeal, I consider it entirely likely that the appellant was given no clarity or direction from the Council on their previous planning applications. Consequently, I consider that they had no choice but to appeal. They have therefore incurred expense in presenting their case and had to do so with very little clarity over why the Council found it unacceptable.
10. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense at appeal, as outlined in the PPG, has been demonstrated and that a full award of costs is justified.
11. 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 Havering shall pay to Mr K Anderson, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Council of the London Borough of Havering, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Hayley Butcher

INSPECTOR