
Costs Decision

Site visit made on 12 August 2020

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd October 2020.

Costs application in relation to Appeal Ref: APP/H5390/W/20/3251263 1A Ravenscourt Road, London W6 0UH

- 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 Hackner for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of the existing single storey office building and erection of a replacement 2 storey office building (Class B1). Alterations to the front boundary treatment and installation of new gates to the front boundary wall; associated car and cycle parking.
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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. The PPG also states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. The applicant states that, taking into account the history of the site and as, in their view, the scheme is acceptable the Council should have approved it within the statutory 8 week period and avoided the need for the appeal. They therefore hold that the Council failed to act proactively in the planning process thereby causing the applicant to incur unnecessary costs.
4. The PPG, in its guidance on when an award of Costs may be made, states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
5. The Council validated the current application on 25 October 2019 and a decision was, therefore, due on 20 December 2019. At the time the application

- was made the appeal¹ against the previous application was ongoing. The Inspector's Decision was received on 9 December 2020. In my view, it is not unreasonable for the Council to wait until the outcome of a very similar proposal on the same site has been determined before assessing any revised application.
6. The Council's evidence contains an email from the applicant which states that they had previously agreed to a request from the Council for an extension of time prior to the festive break in December.
 7. The previous Case Officer left the Council on 14 February and the new Case Officer resumed communication with the applicant on 27 February 2020. It is understandable that the Council would allow additional time for a new Case Officer to familiarise themselves with an application prior to entering into further discussions with an applicant. Therefore, I consider that the Council have clearly explained their reasons for not reaching a decision within the relevant time limit and these reasons are justifiable.
 8. In the email of the 27 February the new Case Officer explained that, in her view, the scheme did not address the concerns raised by the previous Inspector and stated that refusal would be recommended. This was done prior to the submission of the appeal.
 9. Following submission of the appeal, the Council expanded on their assessment and explained the reasons why permission would not have been granted had they determined the application.
 10. I note that the Council refused to accept any revisions as part of the application. However, the applicant chose to submit a new application prior to the determination of the first appeal thereby reducing any opportunity to work proactively with the Council to address any concerns the Inspector may have raised. It is not unreasonable for there to come a point whereby a Council makes a decision to determine an application without further negotiation; particularly where they believe the development is unacceptable in a number of ways and any revisions would require further consultation.
 11. Whether or not a proposal would cause harm, and therefore fail to accord with the adopted development plan policy, is a matter of planning judgement. The Council have clearly set out the reasons why they would have refused the application and have substantiated these reasons, reaching a judgement in the way they are entitled to.
 12. Accordingly, I do not consider that the appeal could have been avoided altogether.
 13. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

L J O'Brien

INSPECTOR

¹ APP/H5390/W/19/3233614