



Costs Decision

Site visit made on 7 September 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2021

Costs application in relation to Appeal Ref: APP/L5810/W/20/3253387 672 Hanworth Road, Whitton, TW4 5NP

- 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 Arif Sheikh, Linden Hill Capital Homes KUPG PROP Limited for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of the existing structures and the erection of two buildings, consisting of a retail unit and community centre at ground floor and 16 residential units above, parking and associated hard and soft landscaping.
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Decision

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

Reasons

2. 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 expense in the appeal process.
3. The essence of the application is that the Council's officers provided unreliable pre-application advice, did not review the planning application properly or promptly and so prevented or delayed development that should be permitted. The applicant does not state whether the application is for a full or a partial award of costs. However, having regard to the matters referred to by the applicant, I have considered this application on the basis that it is for a full award.
4. The proposed development evolved over a period of time in response to pre-application advice from Council officers, including the urban design officer. This was therefore an effective¹ outcome and the applicant considered that the improved² scheme that was submitted to the Council had addressed matters identified by officers. However, it is not the Government's expectation that all issues will be resolved at the pre-application stage.³ Furthermore, on the evidence before me, it is not clear if all (or any) of the relevant officers had made a site visit to inform their advice at that stage.

¹ National Planning Policy Framework (the Framework) paragraph 39.

² Framework paragraph 39.

³ Framework paragraph 41.

5. On the evidence that is before me, the officer pre-application advice was on a constructive, albeit without prejudice, basis and without the benefit of all statutory, non-statutory and public consultation. Moreover, following the final pre-application meeting I note that further design work on the development were carried out by the applicant, including a 'full drawing pack' with sections, photomontages and layouts.⁴ Whilst the applicant may consider that the submitted application reflected agreed 'main principles' it was nonetheless not therefore exactly the same scheme or complete set of plans and supporting information that officers, including the urban design officer, had already seen or commented on.
6. The development was amended during the Council's consideration of the application and in response to further officer advice, but the urban design officer was not consulted. Notwithstanding the Council's reasons why, this was unreasonable given the previous involvement of this officer at the pre-application stage. However, it is speculation whether the urban design officer would have supported the submitted application, as the appellant contends. In any event, at appeal the Council has objected to the application including for reasons other than urban design. The urban design officer had already provided pre-application advice 'on the principle of the architecture' and 'refinement of the design' and ultimately that advice was a matter of judgement for the planning officer.
7. I appreciate that the applicant may have interpreted some officer communications as indicative that the application was moving towards a favourable outcome. Nevertheless, the position of the officer with responsibility to take a delegated decision or make a committee recommendation had yet to be established. The Council did not determine the application within the relevant time period which expired towards the end of November 2019. A decision by this date would have been efficient but was not an obligation on the Council. Officers communicated their view on the development to the applicant shortly after Christmas and the New Year, in January 2020. I accept that the applicant considers that some of the issues raised by officers came as a surprise, but I have explained above why that would nonetheless have remained a possibility.
8. The applicant submitted new information to the Council and agreed an extension of time until March 2020. However, by this time the effect of the Covid-19 pandemic had caused significant interference with the Council's further consideration of the application, including at a potential planning committee meeting. These circumstances appear to have been an influence on the applicant's decision to instead pursue the matter through the appeal process by the end of May 2020 (and not by further amendments or a fresh planning application) but were not the Council's fault or blame; but in so doing, it also appears to have interrupted the affordable housing negotiations that were at that time still in progress with the Council. Parties in planning appeals normally meet their own expenses.⁵
9. PPG states that 'where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no

⁴ Email to the Council, 24 June 2019.

⁵ PPG paragraph: 028 Reference ID: 16-028-20140306.

grounds for an award of costs against the local planning authority for unreasonable refusal of an application'.⁶ Although the Council did not make a decision on the application, it has produced its objections to the development and while it is unknown what the outcome of a planning committee meeting might have been, as an officer delegated decision this likely would have resulted in the Council refusing planning permission.

10. While I have reached different conclusions to the Council on some of its objections in my appeal decision, including on urban design matters, this should not be taken as vindication of the applicant's complaints in its costs application. The Council was entitled to make the planning judgements that it did, when it did, and it has substantiated its objections in the appeal. Considering my appeal decision, the Council did not therefore prevent development that should 'clearly'⁷ have been permitted.
11. For the reasons given, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense during the appeal process, as described in the PPG, has not been demonstrated and that a full award of costs is not therefore justified, nor is a partial award for the same reasons.

Robin Buchanan

INSPECTOR

⁶ PPG paragraph: 050 Reference ID: 16-050-20140306.

⁷ PPG paragraph: 049 Reference ID: 16-049-20140306.