

Costs Decision

Hearing Held on 9 December 2020

Site visit made on 10 December 2020

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 18th January 2021

Costs application in relation to Appeal Ref: APP/H5390/W/20/3251291 12 Wellesley Avenue, London W6 0UP

- 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 Latifia Investments Ltd for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing car repair workshop (Use Class B2). Construction of new B1 office building including basement, ground, first and second floors. Associated alterations to the existing garage forecourt, including erection of a boundary wall.
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Decision

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

The submissions

2. The costs application and the Council's response were submitted in writing as well as the Applicant's final reply. The main parties did not make any substantive additional points orally at the hearing.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. It adds 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;
 - vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; and
 - refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
5. The first reason for refusal relates primarily to the effect of the second floor on the character and appearance of the Conservation Area. While the Applicant

- considers that the scheme represents a reasonable smallest second storey, and is therefore acceptable, the Council has provided adequate analysis to substantiate their findings with regard to the planning merits of the proposal.
6. Although the Council accepted the principle of a second floor, it had reasonable concerns regarding the height, design, scale and bulk of the second floor which were set out in the planning officer's report and appeal statement. While this may depart from the advice provided during the pre-application process, the planning authority are not bound by this advice. Since the submitted design included a second floor despite the advice provided, it is unlikely that the Council would have found the scheme to be acceptable and an appeal would have been submitted anyway. As such, even if the Council did behave unreasonably in this respect, wasted expense during the appeal process has not been incurred in respect of the first reason for refusal.
 7. The second reason for refusal relates to concerns regarding an increase in the number of vehicle trips. The Applicant had submitted the Transport Statement dated 2017 produced as part of a previous application, as part of the application subject of this appeal. I note the proposal consists of a reduced floorspace compared with the previous scheme, and likely to result in fewer vehicle movements. I also acknowledge that the principle of the office use was accepted by the Council, the comments of the Inspector for the previous appeal and that the issue was not raised during the pre-application process. However, given the age of the document, and the potential for traffic data to change during this time, it was not unreasonable for the Council to require an updated document in this respect.
 8. While the Applicant considers that harm to amenities from vehicle movements in the public highway has no basis in the Development Plan, Policy CC13 of the Hammersmith and Fulham Local Plan 2018 (LP) requires that all proposed developments will be required to show that there will be no undue detriment to the general amenities enjoyed by existing surrounding occupiers of their properties, particularly where commercial and service activities will be close to residential properties. It also states that examples of nuisance include noise. Accordingly, while I have come to a different finding with regard to this main issue, the Council has not behaved unreasonably with respect to the second reason for refusal.
 9. The third reason for refusal relates to the privacy of the occupiers of one of the neighbouring properties. Given the location of the site adjacent to the neighbouring residential properties, as well as the possible number of future users of the proposed building, any harm to the privacy of neighbouring occupiers from the office building has the potential to be a reasonable concern. As such, while the Applicant considers the distance from the second floor to the rear gardens of neighbouring properties to be significant, the Council had reasonable concerns in this respect which were adequately substantiated in the officer's report and appeal statement. Therefore, the Council has not behaved unreasonably in this respect. In this case, the Applicant provided evidence including an additional section as part of the appeal which addressed these concerns and I came to a different conclusion with respect to this main issue than the Council.
 10. The fourth reason for refusal related to sustainable drainage. While it may be common for certain details to be required as part of a condition, since the

information sought by the Council demonstrated the efficacy of the proposed drainage system, there would have been no certainty that the proposed system would have been effective. As such, this reason for refusal could not have been dealt with by a condition and the Council has not behaved unreasonably in this particular regard.

11. Overall, although I have disagreed with some of them, the reasons for the refusal set out in the decision notice are complete, precise, specific and relevant to the application. It also clearly states the policies of the development plan that the proposal would be in conflict with, in their view. These reasons have been adequately substantiated in the Council's Written Statement submitted as part of the appeal.
12. Accordingly, I consider that the Council has not failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision. The Applicant had to address those concerns and the evidence of third parties in any event.

Conclusion

13. Consequently, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

R Sabu

INSPECTOR