



Costs Decision

Site visit made on 3 March 2021

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 March 2021

Costs application in relation to Appeal Ref: APP/L5810/W/20/3261229 18-22 Church Street, Hampton, TW12 2EG

- 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 Brayground Limited for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against the refusal of planning permission for conversion of offices (Use Class B1a) to 14 flats (Use Class C3).
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's claim may be summarised, in reference to PPG, by the Council (a) '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', (b) by failing 'to produce evidence to substantiate each Reason for Refusal on appeal', and (c) by making 'vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis'.
4. There is only one refusal reason. The identified harm relates to "a *lack of parking being provided on site*" and "the *absence of an adequate parking survey that demonstrates any shortfall would not be prejudicial to existing on-street parking conditions*". As only 3 spaces could be provided on site, the applicant submitted a parking survey undertaken in accordance with the widely recognised Lambeth Parking Survey Methodology. Whilst commenting on how many spaces would be unrestricted, the Council ultimately accepted the survey's findings. In other words, the shortfall would not be prejudicial to on-street parking conditions and the alleged harm would not arise.
5. The Council has subsequently explained that its main concern relates "to the *Council's ability to exclude future occupants of the building from obtaining on-street parking permits within any CPZ that might be implemented in the future*". This reasoning is not articulated in the single refusal reason. Nor is it clear that parking stresses in relation to a possible future CPZ is the basis for alleged conflict with Policy LP45 of the Development Plan.

6. The Council's decision not to designate a controlled parking zone (CPZ) in the streets around the appeal site was taken in May 2020; this was before the decision on the appeal application was made. It was therefore known that a CPZ would be unlikely to be designated for the foreseeable future. It was not justified to require the applicant to enjoin with a scheme to exclude future occupants from obtaining on-street parking permits within any CPZ that might be implemented at some point when no harm has been identified in the present. There is no evidence that overspill parking from the proposal may put pressure on parking spaces in a CPZ that may exist in the future. The refusal of the application for the absence of a unilateral undertaking relating to this purpose amounts to unreasonable behaviour.
7. The applicant has submitted a unilateral undertaking with a subsequently approved application for 13 units at the site. That undertaking also obligated the applicant to undertake measures to promote a car club membership scheme for 3 years from first occupation. The Council's report on that application explains this as one of the changes considered to have overcome the previous reason for refusal. Yet car club membership is not referred to in the refusal reason or in the Council's appeal submissions.
8. By comparison, the approved scheme would reduce potential overspill from 11 to 10 spaces. The differential impact on on-street parking conditions and any related conflict with planning policies would not be significant. The significant difference between the two proposals, and the identified benefit on the approved scheme, is the submission of the unilateral undertaking. My findings are that such an undertaking is unnecessary.

Conclusion

9. The Council's refusal reason is poorly phrased in relation to the alleged harm. Its assertion that the proposal would result in an unacceptable impact by reason of overspill car parking on local streets is not supported by the submitted evidence or by any other objective analysis. The refusal of the appeal application for the absence of a unilateral undertaking in relation to a CPZ which may or may not be designated at some point in the future amounts to unreasonable behaviour. The decision to refuse the application has resulted in unnecessary and wasted expense in bringing the appeal. A full award of costs is therefore justified.

Costs Order

10. 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 Richmond-Upon-Thames Council shall pay to Brayground Limited, the costs of the appeal proceedings described in the heading of this decision. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR