
Costs Decisions

Site visit made on 20 January 2021

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd March 2021

Costs application in relation to Appeal B Ref: APP/E5330/W/20/3251833 38 Wellington Street, Woolwich, SE18 6PE

- 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 Paradigm Wellington Ltd for a full award of costs against the Council of the Royal Borough of Greenwich.
 - The appeal was against the refusal of the Council to issue a notice of their decision to grant planning permission subject to conditions for change of use of the existing A3/A4/D2/B1 to A3/A4/D2/B1 (inclusion of D1 Education Facility), with the installation of a partial mezzanine floor and associated external alterations, to include the provision of 2 new entrances, introduction of bollards/ramps on Wellington Street and Polytechnic Street and removal of brick panels to provide additional windows and provision of cycle storage on ground level.
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Costs application in relation to Appeal C Ref: APP/E5330/W/20/3257725 38 Wellington Street, Woolwich, SE18 6PE

- 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 Paradigm Wellington Ltd for a full award of costs against the Council of the Royal Borough of Greenwich.
 - The appeal was against the refusal of the Council to issue a notice of their decision to grant planning permission subject to conditions for change of use of the lower ground floor to include Class D1 to already consented A3/A4/D2/B1 uses with the installation of a partial mezzanine floor and associated external alterations, to include the provision of 2 new entrances, introduction of bollards/ramps on Wellington Street and Polytechnic Street and removal of brick panels to provide additional windows.
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Decisions

Application in respect of Appeal B

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

Application in respect of Appeal C

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

Procedural Matters

3. For ease of reference with the main decision I have included the same titles for Appeals B and C. An application for costs in respect of Appeal A was not made.

Appeal B

The submissions by the applicant

4. The application has been made on procedural grounds. In summary these cover the following points:
 - The Council's objections were based on technical grounds which could have been overcome through the use of Grampian conditions, and
 - The Council was required to consider the application for planning permission with the benefit of the additional information submitted by the applicant. Reference is made to a legal case¹
5. Furthermore, the Council have behaved unreasonably resulting in the applicant to incur unnecessary expense.

The response of the Council of the Royal Borough of Greenwich

6. In summary the Council's position is identified in corresponding bullets as set out below:
 - Pre application advice had identified most of the issues involved in the application for planning permission; the outstanding matters were only addressed in the late submission of additional information received after the officer report had been published, and
 - The Council has discretion² on the information it accepts.
7. The Council has behaved entirely reasonably in respect of the presentation of evidence on this issue.

Reasons

8. The Guidance advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the process. I shall aim to address each strand of the applicant's case in turn.
9. The background to this application was the interruption of normal working practice by the Covid-19 pandemic. This changed how the decision would have been made, being determined through officer's delegated powers rather than by the Woolwich and Thamesmead Area Planning Committee.
10. The pre-application advice provided by the Council is comprehensive and clearly identifies the areas, amongst other matters, which were the subject of the late submissions, made by the applicant. Not all of these matters were simply technical which could have been addressed by condition. The omission of details in respect of student numbers is instructive in this regard. The context of the appeal site with several floors of residential above, required particular attention to detail from the outset, in line with the advice given.
11. The Guidance allows a Council discretion in how to treat information received during the management of an application. The information sent in by the appellant did not address an omission in a relevant chapter in the site's planning history, as in Kides. It was not inevitable that if the additional information had been accepted by the Council permission would have been granted. This is demonstrated by the Council's outstanding concerns over the

¹ R (Kides) v. South Cambridgeshire DC [2002] EWCA Civ 1370

² Planning Practice Guidance (the Guidance) para 61 reference ID: 14-061-201403306

details of the ventilation and air conditioning plant in respect of its case for both Appeals A and B.

12. Whilst the appellant, in their desire to secure a planning permission could have addressed all matters referred to in the pre application advice from the outset, this situation was compounded by the Council in not accepting the additional information supplied.

Conclusions

13. I find that both parties acted unreasonably in this case.

Appeal C

The submissions by the applicant

14. The applicant's case is made on procedural grounds seeking a full award of costs. The grounds of claim can be summarised as follows:
- The Council's failure to engage with the applicant by informing them of the comments of the Metropolitan Police meant that they had insufficient time in which to respond. This led to the decision to refuse planning permission.
 - The oral representations to the Planning Committee made by the police officer differed from what the appellant had been told by the Council officers.
15. Furthermore, the Council have behaved unreasonably resulting in the applicant to incur unnecessary expense.

The response of the Council of the Royal Borough of Greenwich

16. The Council's response can be summarised as follows:
- the concerns of the Metropolitan Police could be addressed through their suggested condition. It was unnecessary to refer these to the appellant on receipt. This was only carried out as part of the consultation with the appellant on pre commencement conditions. However, no comments were received in response, from the appellant in the period following this but before the date of the Committee.
17. The Council have behaved entirely reasonably in respect of the presentation of evidence on this issue.

Reasons

18. The Guidance advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the process.
19. The appellant had sought to address the Council's objections in its submission of the third application. Whilst the Council had not consulted the Metropolitan Police on the previous applications this was at its discretion.
20. Although the comments of the Police may have been received late in the application process, both parties were content with the suggested condition. It would seem that the appellant had sufficient time to respond but did not take the opportunity. Although it would seem that the tone of the objection differed

from what had been relayed by the Council to the appellant in advance of the Committee, when orally presented, the Council cannot be held to account for this.

21. The decision of the Committee to overturn the officer's recommendation was a matter for its judgement. The Council members in this case were entitled not to accept the professional advice of officers so long as a case could be made for a contrary view.
22. The Committee determined that the suggested planning condition would alone be insufficient to address concerns over the security of the pupils in the facility. This has been amplified satisfactorily in the case submitted by the Council for this Appeal C.
23. As a result I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusions

24. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance has not been demonstrated.

Stephen Wilkinson

INSPECTOR