



Costs Decision

Hearing Held on 16 March 2021

Site visit made on 21 March 2021

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Saturday, 08 May 2021

Costs application in relation to Appeal Ref: APP/Y5420/W/20/3260114 10 Gourley Street, Tottenham, London, N15 5NG

- 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 the Council of the London Borough of Haringey for a full award of costs against Twin Attitude Limited.
 - The hearing was in connection with an appeal against the refusal of planning permission for proposed roof extension to provide 2 additional floors.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals are expected to meet their own costs. Costs can be awarded where, amongst other things, the following conditions apply: the party against whom a cost award is sought has behaved unreasonably and that unreasonable behaviour has caused the party applying for the costs to incur wasted or unnecessary expenditure in the appeal process.
3. The Council has argued that an award of costs should be made against the appellant for the following reasons:
 - the appeal as a whole had no reasonable prospect of success as it was clearly not in accordance with the development plan and therefore the Council has incurred wasted or unnecessary expense in having to defend the appeal;
 - the appellant has failed to cooperate with the Council to agree a planning obligation to address reason for refusal No 6, having agreed that the requirements were reasonable and acceptable in their planning statement. This has led to the Council incurring wasted or unnecessary expenditure in preparing a planning obligation;
 - the applicant has failed to cooperate in agreeing a Statement of Common Ground (SoCG) and not agreeing factual matters common to witnesses of both principle parties. This has led the Council to incur wasted or unnecessary expenditure in preparing a SoCG; and

- the appellant has provided information that has been shown to be manifestly inaccurate or untrue and this has led the Council to incur wasted or unnecessary expenditure in order to refute that information.
4. I note in its costs claim that the Council has set out 5 grounds it considers are the basis of an award of costs against the appellant. However, ground 2 and 3 both relate to the alleged conduct of the appellant in the acceptance and drafting of the s106 agreement. I will therefore consider these as a single ground for an award of costs to be made.

The appeal has no reasonable prospect of success

5. The PPG states that costs can be awarded against an appellant if there is no reasonable prospect of an appeal being successful. This might occur where the development is clearly not in accordance with the development plan and no other material consideration such as national policy are advanced or other material considerations are supported by inadequate evidence.
6. The Council argues that the site is within an allocation which requires proposals to be accompanied by a site wide masterplan and to demonstrate that the proposal does not compromise the coordinated development of the area. This requirement is addressed in Policy DM55 of the Development Management Development Plan Document, adopted in July 2017 (DPD) and set out in Policy SS4 of the Tottenham Area Action Plan, adopted in July 2017 (AAP). Therefore, and without a site wide masterplan submitted with the application, it demonstrably fails to accord with the development plan and that other material considerations were supported by inadequate evidence.
7. Furthermore the Council has argued that the appellant has failed to address other requirements such as the need for parking to meet the needs of disabled people, inappropriate parking layout, the need for an energy statement, the need for urban greening and biodiversity improvements and sustainable transport. The Council state that no material reasons have been advanced by the appellant for failing to address these matters.
8. I heard evidence at the hearing that the appellant had made previous planning applications at the site and the Council did not require a site wide master plan. It accepted a statement that demonstrated that the proposals would not prejudice the comprehensive and coordinated development of the area. Moreover, Policy DM55 at part C accepts '*in the interim period where a masterplan has not come forward proposals must demonstrate that they will not compromise delivery of the outcomes sought by the allocation*'. Therefore, simply because an application is not accompanied by a masterplan does not mean that it is automatically in conflict with the development plan.
9. However, and in order to be compliant with the development plan, if it is not accompanied by a masterplan, any proposal must demonstrate that it will not compromise delivery of the outcomes sought by the allocation. It is clear that the appeal proposal did not demonstrate this, either through the information supplied with the planning application or through the appeal process. Moreover, there was little focus either in the evidence put forward prior to the appeal or at the hearing on the material considerations which supported the proposal.
10. I note that the appellant has argued that appellant has a '*legislative right to challenge any planning decision*'. That is correct, however that right has to be

exercised reasonably and with due regard to the development plan and its requirements. The PPG states that the right of appeal should be exercised in a reasonable manner and all parties should behave reasonably. That means, amongst other things that evidence should be provided to support a case, especially when that case is in conflict with the development plan.

11. As a result, I find that the appellant behaved unreasonably in lodging an appeal which was clearly in conflict with the policies of the development plan, where the material considerations in favour of the application were either non-existent or supported by inadequate evidence. This resulted in the Council incurring wasted or unnecessary expenditure in having to defend the appeal.

Failing to cooperate or agree a s106 planning obligation

12. It was clear there was no agreed s106 planning obligation in place prior to the start of the hearing. This appears to be due to the appellant's refusal to accept the detailed provisions which were required by the Council and their failure to engage with the Council in order to make the s106 planning obligation effective. However, and in any event, the Council and the appellant would have needed to engage in negotiations to prepare an acceptable and legally compliant s106 planning obligation. This in itself would have incurred cost.
13. Therefore whilst I accept that there might have been unreasonable behaviour on the part of the appellant over the drafting of the s106 planning obligation I do not consider that this has led the Council to incur wasted or unnecessary expenditure as that expenditure would have been of a similar scale to producing an agreed s106 planning obligation.

Statement of Common Ground

14. The Council has alleged that the appellant has failed to cooperate in agreeing a SoCG and not agreeing factual matters common to witnesses of both principle parties. This has led the Council to incur wasted or unnecessary expenditure in preparing a SoCG.
15. An agreed SoCG was produced on the eve of the hearing and supplied at the hearing itself. In producing a SoCG parties are expected to cooperate to identify factual areas where they are in agreement and highlight those areas where there is no agreement. This helps to focus the discussion at the hearing. It is clear that there have been difficulties between the parties in producing an agreed SoCG and that the appellant did not produce the first draft of the SoCG as required. This led the Council to produce a first draft of the SoCG.
16. As with the matter relating to the production of the s106 planning obligation the Council would have been involved in amending or adding to the SoCG which ever party produced the first draft. Moreover, the appellant's alleged refusal to engage with the Council's draft and issue their own, whilst it might have been unreasonable behaviour, did not lead to wasted or unnecessary expenditure. This is because the Council would have needed to have been involved at some stage in its journey to an agreed document. It is likely that the expenditure involved in the process would have been similar to that had the production of the SoCG followed a more conventional route.
17. Therefore, whilst I accept that there might have been unreasonable behaviour on the part of the appellant in the production of the SoCG I do not consider that this led to wasted or unnecessary expenditure by the Council.

Information supplied by the appellant was inaccurate or untrue

18. The Council has referred to two examples where they allege that the appellant has supplied information that is manifestly inaccurate or untrue. These examples concern the application of the requirement for a masterplan set out in DM55 and the height of the proposed building.
19. It is clear that a masterplan has not been required for all applications in Table 7.1 of the Development Management DPD under DM55. This is because planning application reference HGY/2017/2458 was permitted without a masterplan as it contained a statement that demonstrated to the satisfaction of the Council that it would not prejudice the objectives of the policy. Therefore, the Council would have needed to explain why this application was treated differently to others which might have been made in the allocation area. I do not therefore consider that the appellant was inaccurate when raising this matter.
20. In terms of the height of the building this was considered at the hearing and the building height was clear from the plans showing the proposed sections AA and BB, drawing No13 (Rev A). Whilst the statement produced by the appellant refers to a different height it is not clear where that height was measured from. Given the sections shown on drawing No 13 I do not consider that this is a deliberate attempt on behalf of the appellant to mislead. Therefore, I do not consider that this is unreasonable behaviour that has led to wasted or unnecessary expenditure by the Council.

Conclusion

21. The PPG requires that for an award of costs to be made, a party has to have behaved unreasonably and that unreasonable behaviour has directly caused another party to incur wasted or unnecessary expenditure in the appeal process.
22. I find that the appellant behaved unreasonably in lodging an appeal which was clearly in conflict with the policies of the development where the material considerations in favour of the application were either non-existent or supported by inadequate evidence. This resulted in the Council incurring wasted or unnecessary expenditure in having to defend the appeal.

Costs Order

23. 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 Twin Attitude Limited shall pay to the Council of the London Borough of Haringey the full costs of the appeal proceedings described in the heading of this decision.
24. The Council is now invited to submit to the appellant, to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement as to the amount. In the event the parties cannot agree on the amount, a copy of the guidance notes on how to apply for a detailed assessment by the Senior Courts Costs Officer is enclosed.

Peter Mark Sturgess

INSPECTOR

