



Costs Decisions

Site visit made on 13 April 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2021

Costs application A in relation to Appeal Ref: APP/Q5300/W/20/3260507 Blackhorse Tower, Holbrook House and Churchwood House, 116 Cockfosters Road EN4 0DY

- 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 A Ward (Chase New Homes Limited) for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for development described as 'Change of use from offices (B1(a)) to residential (C3) to provide 200 residential units within the buildings of Blackhorse Tower, Holbrook House And Churchwood House, 116 Cockfosters Road and land within its curtilage for associated use'.
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Costs application B in relation to Appeal Ref: APP/Q5300/W/20/3265561 Blackhorse Tower, Holbrook House and Churchwood House, 116 Cockfosters Road EN4 0DY

- 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 A Ward (Chase New Homes Limited) for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for development originally described as 'Change of use from offices (B1(a)) to residential (C3) to provide 197 residential units within the buildings of Blackhorse Tower, Holbrook House And Churchwood House, 116 Cockfosters Road and land within its curtilage for associated use. All habitable rooms will be furnished with large windows on the external facade to ensure the provision of adequate natural light'.
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Decisions

1. The applications for awards of costs are allowed in the terms set out below.

Reasons

2. The 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 or wasted expense in the appeal process.
3. The applicant contends that the Council has acted unreasonably. In particular, it is put forward that the Council failed to communicate adequately with them

during the application processes for both the Appeal A¹ and Appeal B² schemes. It is also contended that the Council could have used conditions to address its concerns that the noise mitigation works proposed for the Appeal A scheme would fall outside of the scope of Class O of Part 3, Schedule 2 of the GPDO³. Additionally, it is argued that the Council should not have relied on the development plan and the then emerging London Plan (LP) to the extent that it did in deciding to refuse both schemes due to a purported overprovision of car parking. Moreover, it is advanced that the Council did not have regard to the correct version of the emerging LP at the time the decisions were made.

4. The PPG indicates that local planning authorities will be at risk of an award of costs being made against them due to a lack of co-operation with the other party; if they delay providing information; if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and if they refuse permission on a ground capable of being dealt with by conditions.
5. Correspondence between the applicant and the Council during both application processes has been provided. Whilst this indicates that the Council's communication with the applicant was sporadic, the extent of its co-operation was not so lacking that awards of costs are justified on this basis.
6. The application for the Appeal A scheme did not clearly set out that the noise mitigation measures identified in the noise assessment would constitute permitted development under the provisions of the GPDO or that the measures would not materially affect the external appearance of the building. The appellant did not otherwise clearly indicate that the mitigation could be required by conditions. Whilst paragraph W.(13) of Part 3 of the GPDO enabled the Council to impose conditions to require mitigation, it provided reasons for concluding that the external works would fall outside the scope of Class O. I am satisfied that it acted reasonably during the application process in this respect.
7. However, the Council subsequently determined that noise mitigation measures could be conditioned for the Appeal B application. The same mitigation measures were proposed for both schemes. I have not been provided with compelling evidence which indicates that there was any reasonable justification for the Council to persist in objecting to Appeal A, on the basis that the mitigation fell outside of the scope of Class O, from the point that it decided the Appeal B application. The Council attempted to rely on an appeal decision⁴ to support its stance, but it had been quashed and redetermined before Appeals A and B had been started.
8. The applicant has thus been put to unnecessary and wasted expense in having to contest the Council's continued objection to Appeal A in respect of the scope of Class O and noise impacts, since 13 November 2020, when the Appeal B application was decided. These matters relate to refusal reasons 1 and 4 as specified on the decision notice for the Appeal A application.
9. The Council broadly agreed with the applicant's conclusions regarding trip generation and the impacts of both schemes on highway junctions. Firm and substantive evidence to counter the appellant's transport and highway evidence

¹ Appeal A reference: APP/Q5300/W/20/3260507

² Appeal B reference: APP/Q5300/W/20/3265561

³ Town and Country Planning (General Permitted Development) (England) Order 2015

⁴ Appeal reference: APP/N5090/W/19/3243616

- in other respects was not forthcoming. Moreover, compelling evidence indicating that an overprovision of parking spaces would have led to demonstrable adverse transport and highway impacts was not advanced.
10. Furthermore, based on the officers' reports for both schemes, the Council determined the proposals without having regard to directions⁵ from the Secretary of State, dated 13 March 2020. These required that the parking standards in the emerging LP, on which the Council gave significant weight, were modified. At the time that the Council determined the applications, the parking provision for the Appeal B scheme accorded with the emerging LP's parking standards as directed to be modified. Whilst there would have been an indicative overprovision of 4 spaces for the Appeal A scheme, the Council incorrectly concluded that there would be an overprovision of 50 spaces.
 11. As set out in the appeal decisions letter, development plan policies may be relevant when considering prior approval matters, but only as evidence to support rather than being the basis of planning judgements. I have been referred to an appeal decision that took such an approach⁶. However, the levels of parking provision for both schemes were in accordance with the London Plan 2016, which was part of the development plan at the time that the decisions were made.
 12. Having regard to the status of the development plan and the emerging LP, the Council's application of the emerging LP's parking standards without modification, and in the absence of firm and substantive evidence indicating that the proposed parking provision would have resulted in demonstrable transport and highway issues, there was no reasonable basis for refusing either scheme due to concerns that the levels of car parking would have led to adverse transport and highway impacts.
 13. The applicant has thus been put to unnecessary and wasted expense in having to contest the second refusal reason for the Appeal A scheme, which relates to concerns regarding car parking overprovision. The applicant has also been put to unnecessary and wasted expense in having to contest Appeal B in its entirety, as the Council did not put forward any reasonable refusal reasons for that scheme.
 14. Notwithstanding the above, the Council provided adequate reasons and acted reasonably in refusing the Appeal A scheme due to concerns regarding the accessibility of cycle parking. Although the officer report indicates that the Council was informed by access standards that relate to new build development, I am satisfied that this was to support, rather than being the basis of, its judgement. The Council thus acted reasonably in defending its position on the Appeal A scheme in terms of the accessibility of cycle parking.

Conclusions

15. I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated. In respect of Costs application A, a partial award of costs is justified, to cover the expense incurred by the applicant in having to contest the Council's second refusal reason, and its first and fourth refusal reasons since 13 November 2020. In respect of Costs application B, a full award of costs is justified.

⁵ Made under the provisions of section 337 of the Greater London Authority Act 1999

⁶ Appeal reference: APP/Q5300/W/20/3248963

Costs Orders

16. 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 the Council of the London Borough of Enfield shall pay to Mr A Ward (Chase New Homes Limited), the costs of the appeal proceedings described in the heading of the decision for Costs application A, which are limited to those costs incurred by the applicant in contesting the Council's second refusal reason for the entirety of the appeal process, and the Council's first and fourth refusal reasons from 13 November 2020 onwards. Those refusal reasons are set out on the Council's decision notice given reference 20/02032/PRJ.
17. Furthermore, IT IS HEREBY ORDERED that the Council of the London Borough of Enfield shall pay to Mr A Ward (Chase New Homes Limited), the costs of the appeal proceedings described in the heading of the decision for Costs application B.
18. The costs are to be assessed in the Senior Courts Costs Office if not agreed.
19. 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.

Mark Philpott

INSPECTOR