
Costs Decision

Site visit made on 25 August 2021

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 06 September 2021

Costs application in relation to Appeal Ref: APP/L5810/W/21/3268861 Hampton Pre-Prep School, 41-43 Wensleydale Road, Hampton TW12 2LP

- 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 Trustees of Hampton School Trust for a full award of costs against the Richmond Upon Thames London Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for improvement works at Hampton Pre-Prep, to include demolition of existing modular buildings, provision of a new school hall, replacement kindergarten accommodation, a redesigned visitor reception and waiting area, a replacement outside WC block and reception class wet area extension, improvements to the sick bay, and improved internal and external connectivity. No increase in pupil numbers, staff numbers, or car parking is proposed.
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Decision

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

Preliminary Matters

2. The costs application submitted by the Applicant does not expressly state whether a full or partial award of costs is sought. However, by reason of the information contained within the costs application, I have interpreted the application as being as an application for a full award of costs, and I have considered the costs application on that basis.

Reasons

3. Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Parties in planning appeals and other planning proceedings normally meet their own expenses.
4. The PPG states that awards against local planning authorities may be either procedural, in respect of behaviour in relation to the appeal process, or substantive, which relates to the planning merits of the appeal. In this instance, the Applicant is seeking a full award of costs in relation to procedural matters.
5. The PPG indicates that a Local Planning Authority's handling of a planning application prior to the appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour. The guidance provides that if the

Local Planning Authority will fail to determine an application within the prescribed time limits, it should give the applicant a proper explanation for the delay. Where this leads to an appeal against non-determination, they should also explain why permission would not have been granted had the application been determined within the relevant period.

6. The Applicant's basis for claiming full costs is that the Council failed to engage constructively with the Applicant during the planning application including at the pre-application stage, and that the Council failed to issue a decision on the planning application within the prescribed period.
7. The evidence indicates that pre-application advice was sought in July 2020 and that a meeting was held between the parties in September 2020. However, written advice was provided on 25th January 2021 which, it is acknowledged, was the day before the eight week deadline for deciding the planning application. The Council did provide a statement of case in response to the appeal which clearly set out the reasons why permission would not have been granted had the application been determined within the relevant period.
8. Whilst it appears that there was some communication between the main parties during the pre-application and planning application process, there does not appear to be any evidence which indicates that reasons were given to the Applicant regarding the delay by the Council or that any extensions of time were discussed or agreed.
9. It is noted that, in their response to the Applicant's costs application, the Council have advised that the pre-application request and planning application were submitted at a time when the Council was experiencing high volumes of work and staff turnover. However, there does not appear to be any evidence which suggests that the Council gave a proper explanation to the Applicant of why the delays had occurred or why the application could not be determined within the relevant period. Having regard to the advice of the PPG, the Council's failure to provide a proper explanation and determine the application in a timely manner, amounts to unreasonable behaviour. The PPG makes it clear that, in such circumstances, if an appeal is allowed, the Council may be at risk of an award of costs¹.
10. As noted above the Council did provide a statement in response to the appeal and it is clear that, had the Council made a decision on the application, it would have refused permission for reasons which included the effect of the proposal on the living conditions of residents at 45 Wensleydale Road. In this case, whilst it will be seen from my appeal decision that I do not agree with the Council on certain issues and grounds, I have agreed with the Council with regard to the impact of the appeal scheme on the living conditions of residents at the neighbouring property.
11. Therefore, I have found that the Council had reasonable concerns about the impact of the proposed development. The Applicant had to address those concerns in any event. As such, even though the Council did not deal with the application in a timely manner, the appeal was in any event necessary.

¹ Paragraph: 048 Reference ID: 16-048-20140306

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

A Spencer-Peet

INSPECTOR