
Costs Decision

Site visit made on 1 February 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2022

Costs application in relation to Appeal Ref: APP/F5540/W/21/3277272 Challenger House, 125 Gunnersbury Lane, Acton W3 8LH

- 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 Harold Cohen for a full award of costs against London Borough of Hounslow.
 - The appeal was against the refusal of prior approval for a development described as "Prior notification under Class O of Part 3, Schedule 2, of the GPDO 2015 to change the use from offices (Use Class B1/E) to 2 residential units (Use Class C3)."
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Decision

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

Reasons

2. The Planning Practice Guidance 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 application for costs relies on substantive matters. The Council refused the application for prior approval on the basis that the proposed development did not accord with the requirements of the nationally described space standards (the NDSS), thereby alleging that the development would not satisfy the terms of paragraph 9(a) of Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
4. On 9 November 2020, the Town and Country Planning (General Permitted Development) (Amendment) (England) Regulations 2020 (the Amendment Regulations) were made, amending the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). The effect of this amendment in relation to this appeal was by Regulation 3 to insert paragraph 9A to Article 3 – Permitted Development, which states that the Schedule 2 of the Order does not grant permission or authorise any development of any new dwelling house where the gross internal floor area is less than 37 metres in size, or where the new dwellinghouse does not accord with the NDSS.
5. Regulation 1 of the Amendment Regulations states that Regulation 3 would come into force on 6 April 2021. However, the Transitional and Saving provisions of the Amendment Regulations, set out under Regulation 12 (2) that:

The amendment made by regulation 3 of these Regulations does not have effect in relation to development under—

(a) Class M, N, O, P, PA or Q of Part 3 of Schedule 2; or

(b) Class A, ZA, AA, AB, AC or AD of Part 20 of Schedule 2,

where an application for prior approval is submitted before 6th April 2021.

6. During the course of the application, through email exchange between the Council and the appellant, the appellant highlighted that the requirement to accord with the NDSS did not apply to applications for prior approval made prior to 6 April 2021; the application subject to the appeal being made on 22 March 2021. The appellant, therefore, correctly stated that the requirement was not applicable in this case. Despite this, the Council persisted in its incorrect interpretation of the Amendment Regulations, stating the requirements came into effect on 6 April 2021.
7. While I note the Council's contention that there is a degree of nuance that can be read into the legislation, I do not accept this. The Amendment Regulations are clear in expressing when the various regulations come into force, as well as outlining the relevant Transitional provisions. On a full reading of the Amendment Regulations, it is clear that given the date on which the application was submitted, the standards imposed by Regulation 3 did not apply in this case.
8. The Council has delayed development which should clearly have been permitted, having regard to the provisions of the Order, and have failed to produce evidence to substantiate the reason for refusal.
9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has been demonstrated. For this reason, and having regard to all other matters raised, a full award for 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 London Borough of Hounslow shall pay to Mr Harold Cohen, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to London Borough of Hounslow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Martin Allen

INSPECTOR