
Costs Decision

Site visit made on 7 March 2022

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2022

Costs application in relation to Appeal Ref: APP/E5900/W/21/3283712 42 Headlam Street, London E1 5RT

- 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 Ranjeet Singh (Lohia Ltd) for a partial award of costs against the Council of the London Borough of Tower Hamlets.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 20, Class A, Paragraph A.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decision

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

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. A Council is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications.
4. The applicant submits that the Council acted unreasonably by not working proactively with them, and if it had, reasons for refusal (RfR) 1 and 2 could have been avoided. The applicant also claims the Council has failed to take account of a similar appeal decision. In a supplementary costs application, the appellant argues that the Council has unreasonably introduced a late RfR relating to the site being within 3km of an aerodrome, and thus cannot be permitted development.
5. The Council offer pre-application advice, and indeed informed the applicant of this during the determination of the prior approval application. The applicant chose not to request pre-application advice, instead submitting the application for determination as they believed the reasons for the previously refused application made pre-application discussions unnecessary.
6. Whilst the applicants may have considered it unnecessary, pre-application discussions would have enabled a collaborative discussion between the parties prior to the submission of the application.
7. The prior approval process involves short and determinative timescales, and there is a pre-application advice process in place which the applicants were

aware of. The Council is under no obligation to negotiate on a scheme that it believes has many fundamental issues, irrespective of the price paid for the application. Furthermore, the Council did proactively work with this applicant by advising them of the pre-application process. This behaviour was not unreasonable.

8. RfR 1 relates to refuse storage and RfR 2 relates to cycle parking. The Council made its assessment of those matters and concluded they were unacceptable based upon the details presented. Indeed, amended plans were submitted with the appeal to overcome RfR 1.
9. I disagree that RfR 2 was made in error, and whilst the officer report lacks specific detail, clear justification is provided in the Council's statement. Furthermore, although ultimately the Council do not defend this RfR in the statement, this is due to the findings of the previous Appeal Decision¹, which was issued after the decision on this application was made. At the time of making the Council's decision, these reasons could not have been avoided and they were not unreasonable.
10. The applicant refers to an Appeal Decision² and provides an extract which sets out that the permitted development right is expressly intended to allow a building to be extended up to 2 storeys, and that the somewhat divergent relationship between buildings would be an inevitable consequence of the permitted development right. Firstly, it goes without saying that each application and appeal is considered on its own merits, and the Council have done so in this case. Secondly, it is my opinion that a permitted development right subject to prior approval does not accrue unless and until a particular proposal complies with the prior approval procedure. Therefore, an assessment of the height of the proposal when considering the external appearance would be appropriate and this does not constitute unreasonable behaviour.
11. Whilst the introduction of additional RfRs can amount to unreasonable behaviour, the timing of the RfR relating to the aerodrome could not have been avoided, given the timing of the Council's advice being received in December 2021 and the Council's decision in May 2021. Therefore, given the Council only recently became aware of this issue, despite it being some 16 months after Part 20 was brought into force, this does not amount to unreasonable behaviour.
12. The location of the helipad in relation to the site could be measured by other publicly available means, such as Google Maps, and it is clear the site is within 3km of the perimeter of the aerodrome. Therefore, whether the Council's mapping system is up to date, or a GIS layer is viewable by the public, are not matters relevant to the determination of the appeal, and this is not unreasonable behaviour.
13. Consequently, the Council has not behaved unreasonably and the application for an award of costs is refused.

Katie McDonald

INSPECTOR

¹ APP/E5900/W/21/3277326

² APP/T1410/W/20/3263486