
Costs Decision

Site visit made on 8 February 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2022

Costs application in relation to Appeal Ref: APP/L5810/W//21/3273318 123 Station Road, Hampton TW12 2AL

- 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 Just Properties (Developments) Limited for a partial award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against the refusal of planning permission for change of use from clothes ironing service to one bedroom flat.
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Decision

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

Reasons

2. The appellant submits that the Council acted unreasonably in that it has sought to introduce a further development plan policy into its reasons for refusing the development. Their interpretation of that policy is also vague and generalised according to the appellant.
3. The National Planning Practice Guidance (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 or wasted expense in the appeal process.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen also places the local planning authority at risk of an award of costs
5. The Council's refusal notice indicates that the proposal is contrary to Policy LP26 of the Local Plan (2018). Other Local Plan policies, including Policy LP25 (Development in Centres) are referred to as relevant in the Council's Officer's Report, yet the only conflict the Council clearly identified was with Policy LP26.
6. In its Officer Report the Council states that the proposal "*...is somewhat supported by LP25...*" and "*The loss of one retail frontage in a row of seven would not adversely impact the vitality and function of this area. As such, the proposal is considered to be passable against Policy LP 25*". Even though it later states that "*housing on the ground floor contributes less to vitality than most commercial or community uses...Therefore, commercial or community*

uses will be expected to front the street", it does not clearly indicate that the proposal would fail to accord with Policy LP25.

7. Even though the Council has not amended its reason for refusal, its Statement of Case (SoC) introduces the argument that the proposal would conflict with the provisions of Policy LP25, despite indicating, in the officer's report, that it would be "passable" against that policy. It further indicates that LP25 seeks to protect retail frontages and outlines the importance of local shops and services to the local community, and in this regard the proposed change of use to a residential flat would not comply with the vision and aspirations of Policy LP25.
8. It is acknowledged that Policy LP25 sets out the Council's strategic position in respect of protecting commercial frontages, whilst providing a hierarchy that distinguishes their different size and role. Therefore, it would be remiss not to consider it as relevant when considering the proposal. However, the Council did not clearly identify in its Officer Report or refusal notice that the proposal was in breach of Policy LP25. Instead, it referred to it being "passable" on a number of grounds. Therefore, the contents of its SoS where it refers to Policy LP25 being breached would have come as a surprise to the appellant, who then had to expend additional time to prepare a rebuttal on why it considered otherwise. Had the Council been clearer and explicit in its Officer Report and refusal notice that it had concerns regarding the proposals compliance with Policy LP25, the appellant could have dealt with that matter in its own SoC.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a partial award of costs is 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 the Council of the London Borough of Richmond-upon-Thames shall pay to, Just Properties (Developments) Limited, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to the Council of the London Borough of Richmond-upon-Thames, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

RE Jones

INSPECTOR