



Costs Decision

Site visit made on 29 March 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2022

Costs application in relation to Appeal Ref: APP/U5360/W/21/3277929 91-93 Rendlesham Road, Hackney, London E5 8PJ

- 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 Rendlesham (Holdings) Ltd for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the refusal of an application for planning permission for demolition of existing buildings on site and erection of a part 3, 4, 5, 6 storey building to include commercial floorspace at ground floor and 9x self-contained residential units without complying with a condition attached to planning permission Ref 2020/0385, dated 12 June 2020.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. Examples given of unreasonable behaviour that may result in an award of costs against a local planning authority include preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
3. Condition 6 of planning permission granted under application reference 2020/0385 ('the original permission') restricts use of the commercial floorspace on the appeal site to office use. Since the original permission was granted, amendments made to the Town and Country Planning (Use Classes) Order 1987 ('UCO') include the creation of a new 'commercial, business and service' use class (Class E) incorporating a number of the former use classes, including offices that were formerly within Class B1a of the UCO. The appeal relates to the applicant's proposal to remove Condition 6 and to use the floorspace on the site within Class E. The applicant argues that the proposal would bring the floorspace on the site in line with the amended UCO, and that it was unreasonable of the Council to refuse the application.
4. The proposal concerns a relatively small unit which is not in a designated priority area for offices. Even so, Policy LP27 of the Hackney Local Plan 2033 (adopted 2020) outlines specific criteria that must be met for development involving the net loss of existing office floorspace to be permitted. As my Appeal Decision makes clear, the applicant has not provided compelling evidence to show that these criteria would be met. Irrespective of the changes

to the UCO, the Council was therefore entitled to find that the proposal would result in conflict with the development plan.

5. The statutory duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 means that the determination of the appeal proposal must be made in accordance with the development plan unless material considerations indicate otherwise. I appreciate that the amendments to the UCO were intended to provide flexibility for businesses to adapt and diversify to meet changing demands, and I do not dispute that this is likely to be important in supporting the viability of the retail and commercial sectors generally and the recovery from the economic impact of Coronavirus. As detailed within my Appeal Decision, I consider the amendments to the UCO are a material consideration of relevance to the proposal. However, the creation of Class E does not in itself mean that it would never be desirable to maintain some control over the use of a site. Nor does it establish that restrictions on a particular site to a specific use falling within Class E would necessarily be inappropriate or unjustified. Furthermore, the weight to be given to material considerations is a matter of planning judgement.
6. In this case, I have found that the circumstances of the appeal site and development plan mean that a restriction on the use of floorspace on the site would be necessary. Given the specific circumstances of the case and the submitted evidence as set out in my Appeal Decision, I have concluded that material considerations including the changes to the UCO, likelihood of the unit remaining vacant, current economic climate and general support within national or local policy for increased flexibility are insufficient to justify making a decision other than in accordance with the development plan.
7. I do not therefore consider that it was unreasonable of the Council to determine the application in line with the adopted development plan, and I do not find that it behaved unreasonably in refusing the application. Because the Council's actions did not prevent or delay development which should clearly have been permitted, it follows therefore that the appeal could not have been avoided, and the applicant has not been put to unnecessary or wasted expense in the appeal process.
8. The applicant has also referred to expense associated with delays to the timeline of the project and in being able to market the unit for other uses in advance of the appeal decision. However, the PPG advises that the costs regime does not extend to indirect costs, such as those which may result from alleged delay in obtaining planning permission. Similarly, whether or not the applicant raised objection to the imposition of the disputed condition originally is of little relevance here.
9. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a full award of costs is refused.

J Bowyer

INSPECTOR