
Costs Decision

Site visit made on 15 June 2022

by Richard Clegg BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18th July 2022

Costs application in relation to Appeals Refs: APP/Y5420/W/21/3277193 & 3277194

Roeder House, Vale Road, Tottenham, London, N4 1PR

- 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 S Shwarz for a full award of costs against the Council of the London Borough of Haringey.
 - The appeals were against the refusals of approval required Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015.
-

Decision

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

Reasons

2. Paragraph 16-028 of Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. Insofar as the use of the site is concerned, the Appellant contends that the Local Planning Authority (LPA) relied on information relating to another property. In the LPA's reports on the applications, schedules of the planning history include two applications relating to Pacific House, the adjacent site to the south-west, but reference was not made to this property in the assessment of the use of the appeal site.
4. The reports did consider Roeder House as a single planning unit, including both the appeal site and the adjoining premises occupied by Just Brothers, leading to a view that the lawful use was as a warehouse in Class B8. This is not a finding I share, but the LPA clearly explained its reasons for taking this view. Importantly, the LPA also considered the alternative position of the use of the appeal site alone, and again set out its reasons for its view that the site was not in office use in May 2013. That view was based on the planning history, a site visit, and an internet search, and also took into account statutory declarations submitted in support of the applications.
5. Irrespective of the consideration of the adjacent premises at Roeder House, the LPA's first reason for refusal stating that the existing use was not Class B1(a) prior to 29 May 2013 is clearly supported by its assessment of the use of the appeal site alone. The second reason for refusal in respect of appeal A (3277193) alleges that the proposal is not permitted development because it involves a mixed use. That view derives from the intended use of part of the

ground floor as office accommodation, and is not a consequence of referring to historic applications relating to another property.

6. The reason for refusal in respect of both applications concerning noise specifically refers to existing commercial uses and not to potential future uses, and that is consistent with the reports on the applications. The LPA pointed to limitations in the information provided with the applications, and I have found that the information provided was insufficient to enable noise to be fully assessed.
7. The LPA considered the information provided in respect of the transport and highways impacts of the developments. The Appellant has suggested that the LPA should have considered addressing transport concerns by means of conditions. However, whilst transport assessments were submitted in support of both appeals, the information available at application stage was extremely limited, and did not provide an adequate basis for imposing conditions on this matter.
8. Paragraph W(13) in Schedule 2 Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) provides that *The local planning authority may grant prior approval unconditionally or conditionally subject to conditions reasonably related to the subject matter of the prior approval.* The provision of cycle storage for residential development is a requirement of The London Plan. There is space at the front of the building, within the security fencing, where cycle parking facilities could be provided. The LPA had concerns about the arrangements for cycle storage shown on the ground floor plans submitted with the applications. In my experience, details of cycle storage are often the subject of a condition, and the LPA did not consider this option. Paragraph 16-049 of PPG gives refusing planning permission on a planning ground capable of being dealt with by conditions as an example of behaviour which may lead to an award of costs against a local planning authority. Although the proposals are concerned with prior approval, the circumstances mentioned in paragraph 16-049 are relevant, and the failure to consider a condition led to reason for refusal No 5 in appeal A and No 4 in appeal B. That was unreasonable behaviour.
9. Paragraph W(2)(bc) in Schedule 2 Part 3 of the GPDO requires prior approval applications to be accompanied by a floor plan indicating the dimensions of each room. Although the LPA expressed concern about the size of the units, it has not stated that those with a floorspace of 12m² cannot be considered as flats. Rather, the reason for refusal in respect of each application states that the proposal has not demonstrated that the units have sufficient facilities to be considered as dwellinghouses. On the evidence before me, that is the position, and the response of the Appellant was to submit an alternative floor plan, removing the two flats with a floorspace of 12m², following the refusal of the prior approval applications. The LPA did not behave unreasonably in respect of this matter.

Conclusions

10. I have found that both appeals should be dismissed: these were not cases where the LPA was preventing development which should have been permitted. However I conclude that the LPA behaved unreasonably in failing to consider the use of a condition to address its concern about cycle storage, which led to

unnecessary expense in addressing this reason for refusal as part of the appeals. A partial award of costs is justified in respect of this matter.

Costs Order

11. 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 Havering shall pay to Mr S Shwarz, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing evidence in respect of cycle storage; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. Mr S Shwarz is now invited to submit to, to the Council of the London Borough of Havering to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Richard Clegg

INSPECTOR