



Costs Decision

Site visit made on 21 June 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2022

Costs application in relation to Appeal Ref: APP/F5540/W/21/3283456 Link 30, 765 Staines Road, Feltham TW14 8RX

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by The EM Watson-Smyth 2001 Settlement for a full award of costs against the Council of the London Borough of Hounslow.
 - The appeal was against the refusal of planning permission for temporary use of land for B8 storage, for a period of three years.
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Decision

1. The application for costs is refused.

Reasons

2. 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.
3. The applicant's application for costs is based on the alleged unreasonable behaviour of the local planning authority (LPA) and wasted expense, for procedural and substantive reasons, as considered below.
4. The PPG defines the procedural matters as being those at the appeal, rather than during the consideration of the application. However, this does not preclude me from taking into account behaviour at the time of the application in considering a costs application. Examples of behaviour where a LPA could be considered to have acted unreasonably 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' and acting contrary to, or not following, well-established case law.
5. In respect of procedural matters, the application was not determined within the 8-week statutory period for this type of application. Furthermore, the applicant's agent failed to receive any reply having made several attempts to chase progress with the application. At appeal, the LPA highlight that the submission of this application was during the peak of the Covid-19 pandemic and the case officer had been seconded to the Borough Emergency Planning service to help with this.

6. In any event, the applicant made a complaint to the LPA in relation to those delays, the LPA responded to the complaint and this also led to progress with the application.
7. Furthermore, where a LPA fails to determine a planning application, the applicant has a right to appeal to the Secretary of State against non-determination. Whilst I have noted the applicant's reasons for not choosing to pursue this, that option was available.
8. Despite the delays in the processing of the applicant's application which are most unfortunate, this was eventually determined by the LPA and a decision issued. Because of the applicant's engagement with the LPAs complaints process and the lack of appeal against non-determination, these procedural matters which led to delays in the determination of the application, did not in themselves result in the appeal.
9. Nonetheless, and irrespective of when Transport for London (TfL) were consulted, the request for additional information in respect of highways matters were not relayed to the applicant's representative, who was therefore unable to address these during the application process. Therefore, I consider this to constitute unreasonable behaviour.
10. Turning to substantive matters, in respect of character and appearance the consideration and determination of this requires a degree of subjective planning judgement.
11. As set out in my appeal decision, the LPAs submissions refer to relevant design policies from the Hounslow Borough Local Plan HLP. Therefore, I am satisfied that the LPAs refusal, insofar as this relates to the issue of character and appearance is complete, specific and relevant to the proposal. Furthermore, the LPAs assertions about the effects of the proposal on character and appearance are supported by sufficient analysis as set out in its submissions.
12. Whilst I have taken the view that a condition could limit the way in which open storage occurs on the site to reduce harm on the character and appearance of the area, including the visual amenity of the Green Belt. This is a matter of planning judgement for the decision maker. Accordingly, LPAs stance in respect of this issue does not amount to unreasonable behaviour.
13. The second issue relates to the compatibility of the proposed use with the aims of the development plan for promoting sustainable modes of travel and highway safety.
14. The applicant has drawn to my attention, three previous temporary planning permissions for open storage, and a refusal in 2019, at the appeal site and states that these did not result in any objection on highway safety matters. However, on the evidence before me, I cannot be certain as to what information and discussions took place in relation to those applications with regard to promoting sustainable modes of travel and highway safety.
15. Furthermore, whilst those approvals also relate to B8 storage uses, the descriptions make specific reference to vehicle storage, whereas the proposal before me does not. I also note that two of the earlier approvals were considered under a different development plan. Therefore, I cannot be certain that the current proposal is inconsistent with previous approvals. In any event, each application is determined on its merits.

16. Moreover, in respect of the application subject of this appeal, the response from TfL dated 14 December 2020, required further information, to understand the traffic and transport impacts of the development. This requirement is supported by Policy T4 of the London Plan, the supporting text to which states that: It is important that the impacts and opportunities which arise as a result of development proposals are identified and assessed so that appropriate mitigations and opportunities are secured through the planning process. Transport assessments are therefore necessary to ensure that planning applications can be reviewed and assessed for their specific impacts.
17. Therefore, I am satisfied that the Council's requirement for additional information to determine if the proposed use promotes sustainable modes of travel and highway safety was justified.
18. In respect of the final main issue, I have found that there is no substantive reason to conclude that the proposal conflicts with the borough's objective for promoting employment growth and development.
19. Drawing on the above reasons, the LPA acted unreasonably with regard to failing to make the applicant aware of the request for information relating to highways matters and in substantiating the assertion that the proposal conflicts with the borough's objective for promoting employment growth and development.
20. However, to make an award of costs I need to be satisfied that these matters resulted in unnecessary or wasted expense in the appeal process.
21. The LPAs reasons for refusal also relate to the effect of the proposal on the character and appearance of the area, along with concern about granting a further temporary planning permission having regard to advice in the Planning Practice Guidance (PPG) in relation to temporary permissions, which is a material consideration.
22. Therefore, while I cannot be certain, it seems likely that even if the LPA had considered the proposal to be acceptable in terms of promoting sustainable forms of travel / highway safety and employment growth and development, this would not have altered the LPAs decision to refuse the planning application on matters relating to character and appearance and strong concerns about allowing a further temporary permission in light of the advice in the PPG, which is a matter of planning judgement. Therefore, an appeal could not have been avoided.
23. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

M Aqbal

INSPECTOR