
Costs Decision

Site visit made on 7 July 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2022

Costs application in relation to Appeal Ref: APP/R5510/W/20/3262346 31 Frithwood Avenue, Northwood, HA6 3LY

- 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 Care Assist Ltd for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the refusal of planning permission for conversion of the existing property from a bed and breakfast (Use Class C1) to a single family dwellinghouse (Use Class C3) without complying with a condition attached to planning permission Ref 8032/APP/2019/2401, dated 11 September 2019.
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Decision

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

Background

2. The Planning Practice Guidance (the 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. The applicant considers that the Council has failed to provide adequate reasons for refusing planning permission, has not substantiated its reasons for refusal, has made inaccurate assertions about the impact of the development and should have granted permission because there has been no material change in circumstances.
4. The Guidance sets out that the types of behaviour which may give rise to a substantive award of costs against the Council include preventing development which clearly should be permitted, failing to substantiate each reason for refusal and making vague, generalised or inaccurate assertions about the proposals impact which are unsupported by any objective analysis. The applicants' claim for costs falls under these categories.
5. It will be seen from my decision letter that planning permission should have been granted for the conversion of No. 31 to a single family dwellinghouse without complying with condition 2 of the 2019 consent¹. As I have said in my decision letter, the Council's objections to the amendment of the approved plans to which condition 2 relates stem from its concern that the amendments facilitate a change of use to a care home. This was not a matter before the

¹ Council Ref. 8032/APP/2019/2401

Council because the planning application sought the revision of plans under an application for variation of conditions. The application did not and could not have secured a change of use to a care home. This error then effected the way in which the Council dealt with the application and the first reason for refusal references change of use to a care home.

6. The Council refers to the use as a care home giving rise to harm to the amenity of the neighbouring property. In its statement the Council explains that it is concerned about noise and disturbance arising from shift workers serving the occupiers and other visitors. The Council's concerns also extend to what it sees as an increase in the perception and risk of crime in the area more generally. In terms of substantiating these concerns the Council refers, in its report to Committee, to comments from local residents. Although these are largely subjective comments they do provide some justification for the decision which the Council made and to that degree it cannot be said that the Council failed to substantiate the first and second reasons for refusal.
7. In respect of the third reason for refusal, the Council's report refers to a consideration of the plans by the Access Officer. It is reasonable to assume that this officer would have knowledge of how inclusive design would be realised. However, the Access Officer refers to standards which relate to care homes, which again arises from the Council's erroneous position in respect of its determination of the application.
8. Drawing these strands together, although the Council did not approach the determination of the application in the correct way it did provide information to substantiate its decision. To that extent the Council has not acted unreasonably.
9. However, if the Council had considered the application in the context of the development as approved being the change of use from bed and breakfast to a single dwelling house, it might have reached the same conclusion which I have. It will be seen from my decision letter that on the basis of the evidence it has not been shown that the revised scheme would have the harmful effects which are set out in the Council's reasons for refusal. To that extent the Council has acted unreasonably in preventing development which clearly should have been permitted.
10. The applicant's prepared a statement specifically in relation to this appeal. The statement was necessary to address the particular circumstances of the case and there is little duplication between it and the statement in respect of the appeal against an enforcement notice which has been linked to the case. Consequently, it is reasonable to regard the expense associated with the production of the statement and the submission of the appeal as unnecessary or wasted expense.
11. The applicants make reference to consultation with Counsel in their application for costs. The applicants selected written representations as the appropriate procedure for dealing with the appeal. On that basis the involvement of Counsel was a choice made by the appellant and was not a necessary expense for a written representations appeal. Similarly, it was the applicant's decision to seek additional legal opinion in the form of the planning advice from Howes Percival dated 14 October 2020 and this was also not a necessary expense.

12. Drawing these points together I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. 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 Hillingdon shall pay to Care Assist Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the production of the appeal statement and the submission of the appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Sarah Dyer

Inspector