



Costs Decision

Site visit made on 23 August 2022

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2022

Costs application in relation to Appeal Ref: APP/H5390/W/21/3287382 26-28 Hammersmith Grove, London, W6 7BA

- 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 Britel Fund Trustees Limited for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - The appeal was against the refusal of planning permission for demolition of existing car park, ramp and garage and construction of an aparthotel/hotel (Use Class C1), ancillary café (Use Class A3) at ground floor level, hard and soft landscaping works, including screening to loading bay.
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Decision

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

Reasons

2. Planning Practice Guidance ('PPG') 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 appellant submits that the Council has acted unreasonably in that it has failed to substantiate its reasons for refusal, and failed to apply the balance set out at s38(6) of the Planning and Compulsory Purchase Act 2004. Moreover, it is submitted that the Council has acted unreasonably in relation to various aspects of its handling of the proposal at application stage.
4. With regard to the first reason for refusal, the Council has provided a reasoned case as to why it considers the acoustic screen to be harmful to the occupiers of Nos 32-34 Hammersmith Grove. Whilst there is a dispute as to whether the screen accords with Key Principle HS6 of the Council's Planning Guidance SPD (2018), this is phrased so as to allow for a judgement to be made depending on the circumstances of the site. Whilst I concluded that this matter could be dealt with by condition, it was not unreasonable for the Council to come to a different view. In any case, I note that only a relatively short section of the appellant's Statement of Case is given over to addressing this matter.
5. With regard to the second reason for refusal, the Council identified a number of perceived deficiencies in the appellant's technical noise submissions, including with reference to the type of noise that would be generated. It also identified a number of negative effects it considers would be likely to arise. Whilst I came to a different view, the Council did not act unreasonably in refusing permission on these grounds.

6. In terms of the third reason for refusal, I again have a detailed case before me in support of the Council's position. In this regard, the Council has highlighted perceived deficiencies in the appellant's Transport Assessments and has described the highway safety and road network issues that it considers would arise. These are, to an extent, matters of professional judgement and the Council did not act unreasonably in reaching this view.
7. It is also asserted that the Council failed to apply the balance set out at s38(6) of the Planning and Compulsory Purchase Act 2004. However, the purported benefits of the scheme were addressed in the Planning Officer Report and a planning balance section was included in the Council's Statement of Case. The weight to be attached to these benefits is a matter of planning judgement, and the Council did not act unreasonably in this regard.
8. The Council's Questionnaire incorrectly identifies the site as falling within a conservation area. However, this error is not repeated elsewhere, and the Planning Officer Report clearly states that the development is outside of the conservation area boundary. Moreover, this matter was not identified as a reason for refusal. The Council therefore did not act unreasonably in this regard, and no wasted expense was incurred.
9. With regard to the alleged failure to negotiate at application stage, or share consultation comments, it is unclear whether an alternative course of action would have avoided the appeal or narrowed the issues under dispute. In this regard, the Council has consistently raised concerns regarding the development, including in pre-application advice. It is also not bound by the advice it receives from internal consultees. In any case, PPG¹ is clear that costs cannot be claimed for the period during the determination of the planning application. Similarly, any costs associated with the previous refused permission (Ref 2019/01462/FUL) are not eligible for an award of costs.
10. PPG² also advises that costs awards cannot extend to compensation for indirect losses, such as those which may result from an alleged delay in obtaining planning permission. In this regard, any loss of potential investment or delays incurred to hotel operators are not eligible for an award of costs.
11. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Thomas Hatfield

INSPECTOR

¹ Paragraph: 033 Reference ID: 16-033-20140306

² Paragraph: 032 Reference ID: 16-032-20140306