

Costs Decisions

Hearing Held on 20 September 2022

Site visit made on 20 September 2022

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Costs application in relation to Appeal Ref: APP/F5540/W/22/3298720 719-727 London Road, Hounslow TW3 1SE

- 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 Origin Investors (Hounslow) Limited for a full award of costs against London Borough of Hounslow.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing building and redevelopment of the site to provide residential units (Class C3) within a new building with associated access, provision for on-site servicing, accessible car parking spaces, landscaping and refuse and recycling storage facilities.
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Decision

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

The submissions for Origin Investors (Hounslow) Limited

2. The costs application was submitted in writing with additional points made orally at the Hearing.
3. The appellant considers that the Council have acted unreasonably on two counts. The first being that development has been prevented that should clearly be permitted having regard to its accordance with the development plan. The second is that the Council introduced fresh and substantial evidence at a late stage by including concerns around housing mix which was not included in the decision notice.

The response by London Borough of Hounslow

4. The Council's response was made orally at the Hearing.
5. The Council consider that they have not acted unreasonably in either procedurally or substantive terms indicating that whilst the Officer recommendation was for the application to be approved, it is reasonable for the planning committee to make a different decision. The Council also indicated that the matter of housing mix should have been included in the decision notice and nevertheless this matter was introduced in a timely manner and was not late evidence.

Reasons

6. Paragraph 030 of the 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.
7. The Council is not duty bound to follow advice of its professional officers however, if a different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. Whilst it is understood that there were extensive pre-application discussions, the issue of character and appearance is a subjective matter and the Council's evidence presented at the hearing clearly discusses why they consider the proposal is unacceptable in relation to the development plan and national policies. I am satisfied that the Council have not acted unreasonably and has shown that it was able to substantiate the first reason for refusal.
8. With regards to the second refusal reason relating to affordable housing provision, the alleged failure to meet development plan policy has not been substantiated other than by vague means of reference to housing mix. The issue of housing mix is not included in the decision notice nor is it detailed in the Council committee minutes. This matter was introduced as fresh and substantial evidence during the appeal process which necessitated extra work for the appellant that would not have otherwise arisen. This constitutes unreasonable behaviour contrary to the guidance in the PPG and the appellant has been faced with the unnecessary expense of defending matters relating to the second refusal reason.
9. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting the Council's second reason for refusal, is justified.

Costs Order

10. 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 London Borough of Hounslow shall pay to Origin Investors (Hounslow) Limited the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's second reason for refusal, which related to affordable housing and the introduction of housing mix issue.
11. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Chris Baxter

INSPECTOR