

Costs Decision

Site visit made on 12 April 2023

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2023

Costs application in relation to Appeal Ref: APP/Q5300/W/22/3309367 Garages adjacent 161-163 Hoppers Road, Winchmore Hill, London N21 3LP

- 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 Hilton Maydal (London) Limited for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of existing garages and erection of a 3-storey building comprising 9 no. residential units with car parking, bin/cycle storage and associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant's claim involves firstly, on procedural grounds, that there was a delay in providing information or other failure to adhere to deadlines, and only supplying relevant information at appeal when it was previously requested, but not provided, at application stage.
4. In this regard, the PPG states at paragraph 048 that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
5. An email trail of correspondence between the applicant and the Council during the planning application process has been provided. Although the applicant was chasing feedback from an early stage, this information indicates that within the statutory 8-week determination period, the Council informed the applicant of concerns with the proposed development with regards to the design and that this would likely mean refusal of planning permission. Although I understand that delays are frustrating, and a lack of communication exacerbates this issue, the reasons were clearly set out when a substantive reply was forthcoming,

and the applicant was advised to withdraw the application and recommended to enter pre-application discussions prior to any resubmission.

6. The applicant chose not to withdraw the application and asked that the Council proceed with the refusal. An extension of time was then agreed, although this period passed without a decision being issued. I have no further correspondence from 11 July onwards.
7. Nevertheless, the applicant was already well aware of the Council's concerns with the proposed development and its intention to issue a decision notice for refusal. Moreover, it was clearly explained in numerous emails from the Council that the planning department had been extremely busy. While this is somewhat vague and is not substantiated, it gives some explanation as to why a decision was not issued up to this point.
8. It is also argued that 'fresh and substantial evidence' at a late stage has been introduced by the Council within its appeal statement which has burdened the applicant with undue additional costs associated with the consideration and response to the Council's late-stage evidence.
9. Looking through the reasons for refusal given in the Council's appeal statement set against the advice given in the email dated 26 May, it is true that the living conditions of future occupiers and a nearby dwelling were not raised. Nor were issues relating to highway safety, vehicle and cycle parking and drainage. However, the email did advise that the number of units was excessive for the size of the site and that it would be of an excessive scale relative to the plot. Indeed, the applicant in their appeal statement agreed that the site was constrained several times.
10. Moreover, although the applicant argues that the issues raised at appeal stage were fresh and substantial, a Transport Statement and a Flood Risk Assessment & Surface Water Drainage Strategy, both dated March 2022, were submitted with the planning application. There was no further, or updated, survey work submitted with the appeal, so it is unclear as to how this has caused the applicant additional expense, particularly as they would have been anticipating an appeal situation arising.
11. On substantive grounds, it is also claimed that the Council was 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.
12. Specifically, the applicant raised concerns during the appeal process that the Council did not address the issue of whether it could demonstrate a sufficient supply of deliverable housing land. Be that as it may, I determined that even in the event of a shortfall in housing supply, this was not sufficient to overcome the harm caused by the design of the proposal which encompasses the reasons for refusal. As such this does not constitute a development which clearly should have been permitted. Moreover, the applicant was able to address this matter in their appeal statement and final comments, and I have little substantive information before me as to why this has caused them additional expense.
13. Similarly, the applicant advises that the Council in its appeal statement raised issues that could have been dealt with via planning conditions. It is unclear as

to which matters this refers, although I did agree in my decision that concerns relating to refuse collection could have been dealt with via planning condition.

Conclusion

14. The Council did not act in an unreasonable manner in the appeal process and its behaviour and actions at the time of the planning application were not unreasonable enough to be given any significant weight in determining this costs decision. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, I determine that the costs application should fail, and no award is made

C McDonagh

INSPECTOR