
Costs Decision

Site visit made on 19 April 2023

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2023

Costs application in relation to Appeal Ref: APP/U5360/W/22/3301661 2-4 Orsman Road, Hackney, London, N1 5QJ

- 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 Basin Properties Ltd for an award of costs against the London Borough of Hackney.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of part three- and part four-storey building to provide 526sqm of office floorspace (as per planning permission 2019/4090), and erection of 2 storey roof extension to existing building to provide 5no. residential flats, and ancillary refuse and cycle storage and landscaping.
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Decision

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

Reasons

2. The Planning Practice 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 claims that the Council has acted unreasonably through not providing written advice to a pre-application submission (2020/3034/PA), not providing meaningful comments on the application (2021/3301) and not reallocating the application in the case officer's absence.
4. Although no written response to the pre-application submission was provided, an online meeting was held attended by the planning officer and the design / conservation officer for the Council and by the applicant, the architect and the planning consultant for the applicant. The lack of a formal response is attributed mainly to workload pressures arising from a criminal cyber-attack on the Council's planning records.
5. Whilst staffing shortages persisted during the time of the planning application which coincided with restrictions put in place by the Government's response to the Covid pandemic, the case was not reallocated, and no formal feedback was provided. The applicant was able to obtain informal comments through direct contact with the design / conservation officer. Full statutory consultation was undertaken but the applicant was unable to view these as the Council's practice has been not to publish comments on the website. The Council contends that there was no other officer available with sufficient knowledge of the site and

- skills required to assess the proposal. The applicant waited until towards the end of the period allowed for appealing against non-determination.
6. My findings are that there were delays in processing both the pre-application submission and the planning application. Even allowing for mitigating circumstances in relation to the cyber-attack, staff shortages and pandemic restrictions, the overall Council response over a considerable time resulted in delays and uncertainties for the applicant. I consider that the Council did act unreasonably in these respects.
 7. However, the applicant was not uninformed of the likely main issues in considering the proposal. These issues would have been discussed at the online meeting for the pre-application submission. The design / conservation officer had previously flagged up "*an in principle objection to roof development*" and reaffirmed this view in a later email. The Council's appeal submissions have been timely and confirm this as the primary issue. An appeal would have been necessary as in all probability the Council would have refused permission in due course.
 8. The applicant has referred to the expense of preparing the appeal form and statement including the submission of "*correct and relevant reports and information*". Furthermore, it is asserted that as "*no meaningful comments were provided, it has been necessary to once again assess and address every possible planning matter within that appeal rather than being able to focus on matters where agreement cannot be reached*".
 9. The supplementary documents prepared covering a range of other planning issues would have been necessary for the thorough coverage of all relevant matters at the planning application stage. Even though the Council has focused on only a few of these matters in contesting the appeal, interested parties have commented on a wider range of points at application and appeal stages. If the main appeal had been allowed, it would have been necessary to ensure that all relevant considerations to the proposal had been covered in reaching that decision and in determining appropriate planning conditions.
 10. My conclusion is that whilst the Council has behaved unreasonably, which has caused some delays, this has not resulted in the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Rory MacLeod

INSPECTOR