
Costs Decision

Site visit made on 4 May 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 June 2023

**Costs application in relation to Appeal Ref: APP/B5480/W/22/3296385
Cranham Golf Clubhouse, Cranham Golf Course, St Marys Lane, Upminster
RM14 3NU**

- 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 Cranham Golf Course for a full award of costs against the Council of the London Borough of Havering.
 - 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 3 no. flats at first floor level above clubhouse restaurant.
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Decision

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

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 application for costs is a substantive claim made on the basis that the local planning authority were provided with all the necessary information and evidence to demonstrate that planning permission should be granted for the development, but instead has failed to determine the application. A full claim for costs is made on the basis that it should not have been necessary for the appellant to make an appeal to the Secretary of State.
4. Following the refusal of a retrospective application for planning permission for three flats on 8 December 2021 the appellant resubmitted the application with proposed amendments and additional information on 13 January 2022 seeking to address the previous reasons for refusal. The Council subsequently issued an enforcement notice on 21 January 2022 alleging the material change of use of the first floor loft space to three self-contained units of residential accommodation. The reasons for issuing the enforcement notice replicated the reasons for refusing the original application for planning permission.
5. On 9 March 2022 the appellant's agent contacted the local planning authority by email to seek clarification on progress of their planning application. The correspondence also included a report from Acoustic Consultants which had been commissioned to deal with the Council's concerns in relation to noise and disturbance caused by customers entering and leaving the Clubhouse, including vehicular movements during evening hours of operation. The local planning

authority responded to that email on 10 March to inform the agent that the application would be refused on similar grounds to the previously refused scheme.

6. The appellant sought to further engage with the local planning authority to establish why the additional information submitted was being disregarded without consideration. In addition, the appellant set out in correspondence dated 11 March how matters relating to fire risk were addressed as part of Building Regulations and that sound insulation had also been addressed as part of Building Regulation Matters. The appellant's agent agreed to an extension of time for the application to be determined until 5pm on 16 March 2022, advising that he was unable to agree a later date due to the time constraints relating to any appeal against non-determination. In addition, he provided photographs of the interior of the flats at the request of the Council Officer.
7. On 17 March the appellant's agent wrote to the Council's Assistant Director of Planning setting out their grounds of appeal relating to the enforcement notice and alerting her to the extant planning application which remained undetermined. Contact was made to try and engage further with the Council and expeditiously work with them to identify what, if any issues remained between the parties, and to enable the appellant to recalibrate his cases if necessary and to avoid appeals and costs. In addition, on 23 March the appellant provided a Day and Sunlight Report that had been commissioned to support his application and appeal. The Assistant Director requested that the appellant give the Council a few more days to determine the application.
8. On 30 March the appellant advised the Council that he still had not had a decision and that 6 April was the deadline for submitting his appeal. No response was received from the Council and the appeal was duly made.
9. Subsequently, on the 12 April 2022 the Council erroneously issued a refusal notice in relation to the application which had been appealed for non-determination. The reasons for the deemed refusal reiterated previous concerns relating to inadequately sized flats, head room, outlook, absence of private amenity space and concerns over accessibility and fire risk. Their second reason refusal differed from that on the initial application and the reasons given for issuing the enforcement notice and instead related to concerns over noise and disturbance from the function room beneath the flats, as opposed to previous concerns about noise from people leaving the premises late in the evening.
10. In response, the Council contend that they sought to fully co-operate with the appellant at all times. Whilst they accept that the claimant provided some information to support his application, some of the evidence was received late and other matters, including fire safety were not addressed at all. They express concerns about being refused access to the premises and believe that their decision has been based on a sound, well-founded appraisal of relevant policies and views obtained from expert advice from other relevant services.
11. Planning Practice Guidance states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples include, 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; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), as part of sensible on-going case management¹.

12. It is clear from the evidence set out above that the appellant made every effort to liaise with the Council through the application process, seeking to address the reasons for which their originally application for planning permission had been refused. A revised layout was submitted to deal with concerns over the size of the flats, measured drawings provided to show ceiling heights, and acoustic survey/technical report and a day light/sunlight report prepared. A comprehensive design and access statement accompanied the application setting out space standards and addressing matters relating to outlook, living conditions and accessibility. In addition, the appellant provided Building Regulation Certificates and agreed to an extension of time to allow the Council to assess additional information and determine the application.
13. It will be seen by my decision that the appeal succeeded, and planning permission granted for the development. I appreciate that the Council supported the appeal with a written statement of case which set out their deemed reasons for refusal, including details of policies of the development plan that they considered the development conflicted with. However, it is clear from the officer reports on both the original and resubmitted application that a site inspection was not carried out prior to the enforcement notice being issued. The resubmitted scheme clearly addressed the previous concerns regarding the layout/size of the units, and this was evidenced on the submitted drawings and in the design and access statement. The Council conceded in their statement compliance with Nationally Described Space Standards and accepted that given the location of the site private amenity space was not necessary. A site inspection would have clearly demonstrated that the flats are well laid out, spacious, provide adequate ceiling heights, benefit from a good outlook and are well lit with natural daylight/ sunlight. Consequently, the Council's first reason for refusal was based on inaccurate assertions about the proposal's impact which was unsupported by any objective analysis. The appellant had also responded to concerns over fire risk, setting out that the matter was one for Building Regulations and not the planning regime in this case, a response with which I concurred.
14. The second deemed reason for refusal concerned noise/disturbance to existing and future occupiers. Although the Council's accepted in their statement of case that their previous concerns regarding noise/disturbance to occupiers resulting from people entering/leaving the Clubhouse in the evening had been allayed by the noise report, they raised new concerns about noise transmission from the function room below the living accommodation. This matter had not been part of the Council's previous refusal reason, and despite referring to consultation with technical experts, no expert evidence was provided to support the Council's case. The concerns were addressed by the appellant at appeal, and it can be seen by my decision that I found this reason for refusal to be unsupported by any objective analysis.

¹ Paragraph: 049 Reference ID: 16-049-20140306

15. With regard to matters of accessibility, a matter which formed the Council's third reason for refusal, the appellant provided detailed evidence in his design and access statement of services and facilities close by and public transport provision. It can be seen by my decisions that I found that although the Public Transport Accessibility Rating for the site is low, it is clear from the evidence available that there are opportunities to walk, cycle and take public transport to gain access to a range of services and facilities, including shops, schools and leisure opportunities. For example, the Council's Statement does not take account of the bus stop which is a couple of minutes walk from the appeal site, nor the farm shop opposite. From the evidence before me and observations on my site visit, this reason for refusal was not supported by any objective analysis.
16. For the reasons given above, I conclude that the Council did not carry out adequate investigations, failed to engage effectively with the appellant to review the case on the evidence made available to them. Consequently, their decision was based on inaccurate, vague assertions which were not based on any objective analysis and resulted in an appeal which could have been avoided.
17. I therefore conclude that unreasonable behaviour by the Council resulting in unnecessary expense, as described in the Planning Practice Guide, has been demonstrated and a full award of costs is justified.

Costs Order

18. 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 London Borough of Havering shall pay to Cranham Golf Club, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to the London Borough of Havering, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.