



Costs Decision

Hearing held on 6 June 2023

Site visit made on 6 June 2023

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 29 June 2023

Costs application in relation to Appeal Ref: APP/R5510/W/23/3316428 Land (Canal) Adjacent To The Old Orchard, Grand Union Canal, Park Lane , Harefield

- 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 Mr Paul Lewin for a partial award of costs against London Borough of Hillingdon.
 - The appeal was against the refusal of planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

The submissions

2. The costs application was made orally at the hearing and relates to the reason for refusal. The Council confirmed during the hearing that the operative part of the planning permission would be unaffected. As such the Applicant considers that the reason for refusal should have been withdrawn or preferably not applied in the first place. This amounted to unreasonable behaviour and wasted expense was incurred in the time spent on Counsel opinion and in time spent in the hearing. However, if the application had been refused, the Applicant would have made a Statement of Case in any event.
3. The response was made orally at the hearing. The Council consider that the reason for refusal was not unreasonable. The operative part of the proposal was understood to be unaffected and the description unchanged. As set out in the Council's Statement and Planning Officer's report, the proposal would be contrary to the Planning Practice Guidance (PPG) as the modifications would amount to a fundamental and substantial change. The Council's findings were consistent with the previous appeal decision.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the 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.
5. The Applicant considers that the Council behaved unreasonably with respect to the reason for refusal which states that the proposal goes beyond the

parameters of a 'minor material amendment' in Section 73 of the Town and Country Planning Act (S73).

6. The PPG states that new issues may arise after planning permission has been granted, which require modification of the approved proposals. It goes on to say that where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted.
7. The PPG also states that there is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.
8. The Council accepted during the hearing that the proposal would not result in conflict with the description of development, or variation of the operative part of the permission as set out in the 'Finney' judgement¹.
9. The Council also confirmed during the hearing that it determined the original application on the basis that the proposed change of use would be permanent. The previous Inspector also considered the permanent residential use of the moorings before deciding that a temporary permission would be necessary given the personal circumstances of the occupiers.
10. Whether modifications would be fundamental or substantial as set out in the PPG is a matter of planning judgement. However, the Council behaved unreasonably by determining the S73 application on the basis that the nature of permission was temporary.
11. Had the Council accepted that the proposal fell within the scope of S73, it would have refused permission on the basis of the effect of the proposal on the character and appearance of the area. It is therefore likely that the Applicant would have submitted an appeal in any event. However, the unreasonable behaviour of the Council resulted in the Applicant incurring additional costs in defending the reason for refusal.
12. I note that the Armstrong² judgement was issued after the Council determined the application. However, as the Council persisted in defending the reason for refusal at appeal, the Applicant nonetheless incurred additional expense in this respect.
13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the reason for refusal and a partial award of costs is therefore warranted.

Costs Order

14. 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 Hillingdon shall pay to Mr Paul Lewin, the costs of the appeal proceedings described in the heading of this decision limited to those

¹ John Leslie Finney v Welsh Ministers and others [2019] EWCA Civ 1868

² Mikael Armstrong v Secretary of State for Levelling Up, Housing and Communities & Cornwall Council [2023] EWHC 142 (KB)

costs incurred in defending the reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The Applicant is now invited to submit to London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R.Sabu

INSPECTOR