



Costs Decision

Site visit made on 5 June 2023

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2023

Costs application in relation to Appeal Ref: APP/N1730/W/21/3278561 Zenith House, 3 Rye Close, Fleet GU51 2UY

- 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 L W Zenith Limited for a full award of costs against Hart District Council.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O, Paragraph O.2(1) of the Town and Country Planning (General Permitted Development) (England) Order (as amended) for the change of use of offices to form 34 flats.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The application for an award of costs was made on the basis that the Council had unreasonably refused to grant prior approval and withheld its legal opinion on which it based the ground of refusal. The appellant contended that the reason for refusing the application could not be substantiated in law in the face of the extant prior approvals. Furthermore, it was suggested that the Council's behaviour amounted to a deliberate and unreasonable frustration of the planning process with the objective of causing the applicant's right to permitted development to become time expired – a kind of administrative filibustering.
4. The PPG provides examples of unreasonable behaviour by local planning authorities. The list includes a lack of cooperation with the other parties and only supplying relevant information at appeal when it was previously requested, but not provided at application stage. The appellant asked the Council to disclose its legal advice as part of a formal request under the Freedom of Information Act (FOIA) and that request was denied. I am not convinced that the PPG guidance is intended to force parties to supply information which is confidential or protected by legal advice privilege. Nevertheless, there are separate mechanisms available within the FOIA to deal with circumstances where an organisation does not provide the information requested.

5. In the event, the Council appears to have disclosed its legal advice as part of its appeal submission. This does not add anything substantive to the officer report and statement of case, both of which are clear in setting out the position of the local planning authority. I am not persuaded that disclosure of the legal advice sooner would have avoided the need for the appeal.
6. I can see nothing in the evidence before me to suggest that the Council ignored the previous grants of prior approval on the site. The planning history is set out in the officer report. The main dispute between the parties related to the interpretation of the Article 4 Direction and its interaction with the Order. Given the complexities surrounding the case, it is to be expected that there would be different positions. The officer report explained that the Council had reviewed the appellant's legal opinion and sought its own legal advice. This was sensible in the circumstances, and not indicative of unreasonable behaviour.
7. Whether or not the Council deliberately sought to extend the process in an attempt to ensure that the previous prior approval had expired is difficult to prove and unreasonable behaviour on this point has not been demonstrated. The available evidence suggests that this was a straightforward disagreement over a specific area of law, and as such the costs incurred by the appellant in lodging an appeal were necessary in order to seek a formal resolution.
8. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and an award of costs is not warranted.

Robert Parker

INSPECTOR