



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 Hart District Council for a full award of costs against L W Zenith Limited.
 - 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 appeal had no reasonable prospect of success. The lapsing of the Article 4 Direction means that it has not been necessary for me to reach a finding on the main issue in dispute. Nevertheless, I note that the previous Inspector was generally in agreement with the appellant's position. That appeal decision has no standing in law, as it has been quashed, but it is a material consideration. As I have set out elsewhere, the available evidence suggests that this was a straightforward disagreement over a specific area of law, and as such the costs incurred by the Council in defending an appeal were necessary in order to seek a resolution.
4. The Council also alleges that the appellant has acted unreasonably in seeking disclosure of legally privileged advice through the incorrect authority. It is not clear how this would have incurred the Council in unnecessary or wasted expense. However, there was nothing unreasonable in seeking the information and the Council was able to deny the request under the provisions of the Freedom of Information Act (FOIA). The evidence before me does not suggest that the appellant was seeking to override the FOIA using the appeal process. In any event, the Council appears to have included its legal advice as part of its appeal submission.

5. Overall, I consider that the appellant exercised their right of appeal in a responsible fashion. Nothing in their behaviour has been demonstrated to be unreasonable and the costs incurred by the Council do not constitute unnecessary or wasted expense. Consequently, there are no grounds for an award of costs.

Robert Parker

INSPECTOR