The Planning Inspectorate

Costs Decision

Hearing held on 18 April 2023

Site visits made on 27 February 2023 and 19 April 2023

by Peter Rose BA MRTPI DMS MCMI

an Inspector appointed by the Secretary of State

Decision date:20 July 2023

Costs application in relation to:
Appeal Ref: APP/U5360/W/22/3291198, (Appeal B/Scheme B), and
Appeal Ref: APP/U5360/W/22/3291203 (Appeal C/Scheme C)
Nos 34-88 Finn House, Bevenden Street, Hackney, London, N1 6BL

- 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 RG Airspace Developments Ltd against the Council of the London Borough of Hackney.
- The Hearing was in connection with three appeals relating to planning applications for roof extensions to the existing building to provide new homes.

Decision

1. The application for a full award of costs in relation to Appeal B and Appeal C (the appeals) is refused.

The submissions by RG Airspace Developments Ltd

2. Schemes B and C (the schemes) sought to address specific reasons for refusal relating to an earlier and separate Scheme A. Council officers confirmed their intention to recommend refusal of permission for the schemes at the beginning of November 2021. Some 11 weeks elapsed without any reasoned justification being provided despite significant attempts by the appellant to engage. The appellant suffered significant additional expense and time delay as a consequence.

3. During the later negotiations on the statement of common ground prior to the Hearing, the Council withdrew objections relating to unit mix and materials. The sole remaining main issue at the Hearing as between the appellant and the Council related to the provision of refuse and recycling facilities, and to which the Council confirmed it had no objection in principle.

4. The Council's suggestion that the appellant should have withdrawn the applications and sought new pre-application advice is frustrating. The appellant did seek pre-application advice for the schemes, and which is largely followed.

5. In summary, the appellant considers the appeals to have been completely unnecessary and could have been avoided. The appellant gave the Council every opportunity to engage in positive discussion on the applications and waited some 16 weeks after the statutory determination deadline before lodging the appeals.

The response by the Council

6. There was a pre-application submission following the refusal of Scheme A, but a number of considerations were not overcome by the subsequent proposals. The pre-application advice was in line with the suggested reasons for refusal that would have been recommended as set out in the Council's subsequent statement of case.

7. The Council adopts a positive and proactive approach when engaging with applicants in line with the Framework. Its practice is to contact applicants regarding any minor issues that may be resolved during the course of the application. The amendments required to the schemes were major and so were not sought.

8. Submission of an appeal for non-determination was not the only option open to the appellant, as it could have withdrawn the two applications and proceeded to work with the Council to overcome outstanding issues through a new pre-application submission.

9. The appellant was provided with the Council's assessment of financial viability but no response was received during the course of the live applications. The appellant stated it was going to review the Council's assessment, but no further response was received, and appeals for non-determination were submitted.

Reasons

10. The Government's Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.[1] It makes clear that costs cannot be claimed for the period during the determination of the planning application, but that all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can still be taken into account in the Inspector's consideration of whether or not costs should be awarded.[2]

11. The Guidance identifies possible unreasonable behaviour by an authority to include preventing or delaying development which should clearly be permitted. It also advises that refusing planning permission on a ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.[3] It indicates that, in an appeal against non-determination, the local planning authority may be at risk of an award of costs if there were no substantive reasons to justify delaying the determination, and better communication with the applicant would have enabled the appeal to be avoided altogether.[4]

12. The Guidance states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision

[1] Paragraph: 030 Reference ID: 16-030-20140306
[2] Paragraph: 033 Reference ID: 16-033-20140306
[3] Paragraph: 049 Reference ID: 16-049-20140306
[4] Paragraph: 048 Reference ID: 16-048-20140306

within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.[5]

13. On 2 November 2021, the appellant was advised that the Council was unable to support Scheme B as the previous reasons for refusal had not been addressed. In relation to Scheme C, it advised that some issues had been resolved but that other matters remained in relation to design as outlined in the pre-application response. The Council further stated that both applications would be recommended for refusal but not until its assessment of viability matters had been concluded.

14. Although, following receipt of the appeals, considerable joint efforts were made to resolve matters in dispute, it is clear that the appellant did encounter significant frustrations in seeking to engage with the Council prior to its decisions to appeal against non-determination, albeit that the authority considered there was an outstanding dialogue relating to viability. More timely and more informative communication from the Council after 2 November 2021 and prior to the appellant's submission of appeals received on 21 January 2022 would not have been unwarranted.

15. Even so, my appeal decisions have concluded how the schemes' then existing shortcomings were not without foundation and I appreciate how, in November 2021 and in advance of the later pre-Hearing discussions and of the Hearing itself, the modifications likely to be required by the Council to progress matters would not have appeared minor or necessarily straightforward. Matters of viability also remained unresolved at the Hearing and so, in any case, the schemes may well have proceeded to appeal on those terms.

16. Whilst I appreciate the frustrations experienced by the appellant prior to the appeals progressing, on a balance of the factors outlined above, I do not find unreasonable conduct on the part of the authority resulting in unnecessary or wasted expense.

Conclusion

17. I therefore conclude that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense incurred by the appellant in relation to Appeal B and Appeal C, as indicated in the Guidance, has not been demonstrated. Accordingly, an award of costs is not justified in this instance.

Peter Rose

INSPECTOR

[5] Paragraph: 048 Reference ID: 16-048-20140306