
Costs Decision

Site visit made on 12 July 2023

by S. Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2023

Costs application in relation to Appeal Ref: APP/X5990/W/22/3309390 1B-1C Tottenham Court Road, London W1T 1BB

- 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 City of Westminster Council for a full award of costs against TCRP (1A & 1B) Ltd.
 - The appeal was against the refusal of planning permission for the change of use from vacant language school (Class F1) to Offices (Class E).
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Decision

1. The application is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG sets out the type of behaviour which may give rise to a procedural claim against an appellant. Those matters include resistance to, or lack of co-operation in providing information; only supplying relevant information at appeal when it was requested but not provided at application stage; introducing fresh and substantial evidence at a late stage necessitating an adjournment or extra expense for preparatory work that would not otherwise have arisen.
4. The Council's claim centres on the appellant's failure to provide marketing information at the application stage, which may have avoided the need for the appeal. Moreover, providing the information only at the appeal stage gave the Council little opportunity to comment, particularly given the standard practice to have such information assessed by an external body. Furthermore, the Council claim that the appellant caused unnecessary delay by referring the application to a cabinet member and requesting it be dealt with by the planning committee rather than under delegated powers.
5. It does not seem unusual to me for an applicant to request that an application be dealt with by a planning committee. Such a request is usually agreed to or not in accordance with the terms of a delegation scheme. In this case the decision to take the matter to a committee for determination was made by the cabinet member. Moreover, whether the application was determined by officers or committee this matter has no bearing on the appeal process. Accordingly, I

can therefore find no unreasonable behaviour on the part of the appellant in that respect.

6. From all I have read, the appellant's focus at the application stage was on promoting the scheme under policies which supported office uses in the area. However, whilst there was no objection in principle to an office use in the locality, the initial planning statement makes no reference to the loss of a community facility or the planning policies relating to such a loss. Noting this, the Council's case officer advised the appellant in various emails that the loss of the community facility needed to be addressed under policies including Policy 17 of the City Plan and PR4 of the Fitzrovia West Neighbourhood Plan. In this regard the case officer's correspondence was transparent and helpful.
7. Policy 17 (c) is clear that the lack of demand for an alternative social and community use should be evidenced by vacancy and appropriate marketing for at least 18 months. Nevertheless, whilst the appellant explained that the floorspace had been vacant for some time and opined that there appeared to be no likely community facility land use for a site in this location at upper floors only, no evidence was supplied to support that claim including any evidence of marketing.
8. It has transpired at the appeal stage that some marketing evidence was available, yet there is no explanation in the costs rebuttal statement why that was not provided to the Council during the planning application process, despite requests from the Council's officers. Given that this is one of the circumstances the PPG indicates could result in an award of costs, it represents unreasonable behaviour on the part of the appellant.
9. For an award of costs to be granted there also has to have been wasted expense. At the time the planning application was determined, in July 2022, the property had been vacant for less than a year, rather than the 18 months required by Policy 17 (c). On that basis, even though the Council state it may have come to a different decision had it had the information, there is no certainty that planning permission would have been granted even if the marketing assessment been provided during the application process. In that case, the matter is one of disagreement between the parties that could have only been resolved by an appeal.
10. I acknowledge that the late submission of the marketing information at the appeal stage gave the Council less time to consider the information, including the opportunity to consult externally as I understand is normal practice. However, the Council did have an opportunity to make representations on it, however briefly, at the final comments stage. Moreover, given that the Council did not carry out preparatory work relating to the matter, there has been no wasted expense in that respect.
11. Consequently, having carefully considered the evidence of both parties, whilst I have found unreasonable behaviour on the part of the appellant, I am not convinced it has resulted in any unnecessary or wasted expense to the Council.
12. Accordingly, the application for an award of costs is refused.

S Ashworth

INSPECTOR