



Costs Decision

Hearing held on 27 June & 26 July 2023

Site visit made on 26 June, 27 June & 26 July 2023

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2023

Costs application in relation to Appeal Ref: APP/F5540/W/22/3302124 17 Hartington Road, Chiswick, London W4 3TL

- The application is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972.
 - The application is made by Ms Campion on behalf of a group of local residents for a partial award of costs against London Borough of Hounslow.
 - The appeal was against the refusal of planning permission for alterations to the main house involving its conversion back to a single family house comprising
 - demolition of modern extensions and garage,
 - the erection of a single storey rear extension and outbuilding,
 - alterations to the driveway and front garden,together with the development of 4 houses within the south-western section of the site, with associated parking, landscaping and all ancillary works.
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Decision

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

Preliminary matters

2. In order to make representations about this appeal, a number of local residents came together in an informal group to pool resources and contribute towards funding advisors on legal, planning and engineering matters. At the Hearing Ms Campion said she represented this group and was instructing the professional consultees supporting them, and she was making the costs application on the group's behalf. I have therefore taken the applicant in this instance to be this group, while I have referred to Residence One Hartington Ltd as the appellant.
3. Although the applicant states that full costs are sought, it is clear from the submissions that these are the full costs incurred by the late publication of evidence, and I have considered the application accordingly.

Case for the applicant

4. The applicant contended an award of costs was sought because the Council did not publish the appellant's lengthy rebuttal (the submissions) to the applicant's flood risk and drainage comments until 2 working days before the scheduled Hearing. This late publication meant there was no time for the applicant's professional advisers to review the information. As a result, when the Hearing opened the matter of flood risk and drainage was deferred until a later date.
5. Over the intervening time between the Hearing's first and second days the submissions were reviewed by the applicant's professional representatives, and those representatives then had to attend on a second day.
6. Moreover, it has also been necessary for local residents to go to the expense of obtaining representation because the Council has been weak in its defence of the case.

7. The Council's unreasonable actions have therefore resulted in unnecessary expense for this group of local residents, and the costs resulting from this are therefore sought.

Case for the Council

8. When the Inspectorate accepted these late submissions, no indication was given for a need to publicise them. Moreover, whenever these submissions had been seen, the third parties would have had to review them. As a result, reviewing them between the first and second days of the Hearing did not incur additional expense.
9. An award of costs is therefore not justified.

Inspector's Reasoning

10. Parties in planning appeals normally meet their own expenses. However, the *Planning Practice Guidance* 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. This is therefore a 2-fold test - firstly there has to be unreasonable behaviour, and secondly that behaviour has to result in the applicant incurring unnecessary or wasted expense.
11. This Hearing initially opened on Tuesday 27 June and was scheduled for one day. However, on opening the applicant requested an adjournment so the submissions from the appellant, that had been put on the Council's web site on Thursday 22 June, could be studied. The Hearing proceeded on 27 June looking at all matters apart from flood risk and drainage, and then resumed on 26 July to consider those matters alone.
12. The submissions were received on or around 24 April and broadly comprised a technical response to comments made by the Council and third parties, as well as evidence to support points the appellant had already made. I consider it important that information is made available by the Council so all can prepare fully before the event. Indeed, it is of note that although it was said that the placing of the submissions on the website was not publicised, the applicant did not contend that it should have been explicitly renotified when those submissions came in. Rather, its case appears to be that the submissions should have been made publicly available so it would have had opportunity to view them. As a result, by placing them on the web site so late with no good justification, and by making them available in no other way, I consider the Council acted unreasonably.
13. The applicant had chosen to seek professional representation from the outset, and so engagement with those professionals would have occurred irrespective of the submissions. Moreover, had the applicant been aware of these submissions when they were submitted in April it is reasonable to assume they would still have wanted them reviewed by their representatives, and so the costs incurred in that regard are not unnecessary. I also consider the applicant's claim that costs have been incurred because of the Council's weak defence of the case is not a basis to make an award, especially as when the applicant was preparing many of its representations the response from the Council would have been unknown.
14. Two of the applicant's professional consultants were in attendance on the second day of the Hearing. Of these though the lawyer was not present on 27 June. As the Hearing was initially expected to sit on that date only, the applicant therefore intended to engage in the proceedings without the lawyer's representation. I accept that the submissions raised matters of flood policy. Those though had been raised beforehand and so would have been discussed on 27 June had there not been an adjournment. I am aware of nothing else in the submissions that would

necessitate the lawyer's attendance on the second day of the Hearing when the applicant had proceeded without it on the first. As such, I consider that the lawyer's attendance on the second day was a matter of choice by the applicant rather than necessity.

15. The second consultant was Mr Cage, advising on matters to do with engineering in general and flood risk and drainage in particular. I consider that a deferral of those matters meant he had to attend for a second day. Therefore, this constitutes unnecessary expense that was incurred because of the Council's actions.
16. Given how long the Hearing sat in total, even if the adjournment had been unnecessary the event would probably not have been completed on 27 June and a further day would have been required. However, in such circumstances, as Mr Cage's principal area of involvement of flood risk and drainage was the first matter on the agenda I anticipate he would not have needed to attend on the second day. The fact that the Hearing would probably have run into 2 days does not therefore overcome the costs incurred.
17. The Council has also implied that the appellant acted unreasonably by presenting the submissions outside of the timetable, but that is not a matter before me as part of this costs application.

Conclusions

18. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated concerning Mr Cage's attendance on 26 July 2023, and a partial award in respect of those costs is therefore warranted.

Costs Order

19. 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 the London Borough of Hounslow shall pay to Ms Campion and the residents who contributed, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in Mr Cage's attendance on 26 July 2023, such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to the London Borough of Hounslow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

JP Sargent

INSPECTOR