



Costs Decision

Site visit made on 10 October 2023

by Stewart Glassar BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2023

Costs application in relation to Appeal Ref: APP/F5540/W/23/3318354 Chicken Valley, 12 Chiswick High Road, London W4 1TH

- 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 Mr Karim (Chiswick Food Limited) for a full award of costs against the Council of the London Borough of Hounslow.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the construction of shopfront.
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Decision

1. The application for a full award of costs is refused. However, a partial award of costs is granted in the terms set out below.

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 applicant has made a full claim for costs covering both procedural and substantive aspects of the appeal.

Procedural Matters

4. The application was not validated by the Council. Its request for additional drawings resulted in the applicant serving an Article 12 Notice on the Council. Unfortunately, as the Council did not formally set out its position in response to the Article 12 Notice an impasse developed between the main parties.
5. It seems clear from reading the submissions that the Council was unaware of its formal requirements under Article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO). Indeed, the Council has subsequently acknowledged that it was not in a position procedurally to refuse to validate the application. Whilst it maintains that the requested information was considered helpful in determining the application, this was not a reason to refuse to validate the application. Furthermore, this situation did not give the Council the power to unilaterally 'withdraw' the application.
6. If at the time of the submission of the application, the Council had given proper regard to, and understood, the provisions of the DMPO there is a strong probability that the application would have been validated at that stage. Indeed, their subsequent assessment of the proposal, without the requested

drawings, further supports the contention that the requested information was not necessary.

7. In light of the Council's actions, it is difficult to see what other option was open to the applicant other than to appeal against the non-determination of the application. Accordingly, I find that the Council's behaviour was unreasonable and directly led to the applicant having to incur unnecessary expense in pursuing the validation issue through the appeal process.

Substantive Matters

8. The applicant infers that had it not been for the validation issues (and thus the need to appeal the situation) the application would have been approved as submitted or subject to amendments.
9. The Council's statement in relation to the planning merits of the case addressed various aspects of the proposal. The Council acknowledged that some elements were acceptable but the lack of glazing bars and stallrisers in particular, weighed against the scheme.
10. Seeking to achieve the objectives of the shopfront guidelines and raising objections to a scheme that was deemed to be contrary to them was not in itself unreasonable. I too noted in my decision that the scheme did not comply fully with the guidelines. Whilst there are some recent shopfronts without stallrisers and glazing bars, there are some existing units that retain such features. Whilst in my planning judgement I considered that the scheme could be permitted, I do not find it unreasonable for the Council to come to the judgement that it did.
11. There is nothing before me to indicate that the Council would have been prepared to approve the scheme as submitted, even if it had validated the application correctly.
12. With regard to possible amendments, I note that the shopfront had been installed and the application was retrospective. It therefore seems highly unlikely that the applicant would have been open to the sorts of amendments that the Council would have been seeking. Indeed, the applicant's final appeal comments reject the Council's objection to the size of the glazed panels and lack of stall risers. There are no examples given of what amendments the applicant might have been willing or able to make. Accordingly, there is nothing before me to suggest that even if amendments had been sought to the shopfront, they would have been forthcoming.
13. In view of the above, I do not find the work undertaken by the applicant in addressing these substantive aspects of the case to have been unnecessary or wasted.
14. However, the Council has not explained why it included in its appeal Statement an assessment of the illuminated signage or why its potential adverse effects were included within the putative reason for refusal. The application was purely for the shopfront, the drawings made clear that the signage was illustrative and significantly, advertisements are covered by a separate consents regime. Therefore, the signage was clearly not a matter to which I could have regard in my decision and its inclusion by the Council was therefore unreasonable.

15. The additional work caused to the applicant in pointing this out was not extensive and so unlikely to have been very time consuming. Nevertheless, it was clearly not something which should have been necessary for the applicant to do and no doubt some costs have arisen in relation to it. This part of the claim is therefore justified.

Conclusion

16. For the above reasons I do not find that the application for a full award of costs is justified. Nevertheless, I find that some unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A partial award of costs is therefore justified, relating solely to responding to the Council's refusal to validate the application and in responding to the inclusion of signage and its associated lighting within the putative reason for refusal.

Costs Order

17. 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 Council of the London Borough of Hounslow shall pay to Mr Karim (Chiswick Food Limited), the costs of the appeal proceedings described in the header of this decision, limited to those costs incurred in responding to the Council's refusal to validate the application and in responding to the inclusion of the signage and its associated lighting within the putative reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to the Council of 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.

Stewart Glassar

INSPECTOR