
Costs Decision

Site visit made on 19 September 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2023

**Costs application in relation to Appeal Ref: APP/E2734/W/23/3326057
Simpson House, Windsor Court, Clarence Drive, Harrogate, North
Yorkshire HG1 2PE**

- 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 Bramhope Property and Investments Limited for a full award of costs against Harrogate Borough Council.
 - The appeal was against the refusal of prior notification for change of use of offices (Use Class E) to 12 apartments (Use Class C3).
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Decision

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

Reasons

2. 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 considers that the Council refused planning permission that was clearly in accordance with the criteria set out under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). This is because the application was supported by a Daylight and Sunlight Assessment that was based on national guidance. The results of which established that the apartments would achieve adequate internal daylight and sunlight levels. It is also contended that the Council failed to co-operate with the appellant and incurred unnecessary delays at application stage.
4. It shall be seen from my decision upon the planning appeal that is the subject of this application that the Daylight and Sunlight study undertaken explains that the trees and surrounding topography have been included within the study incorporating a 'European Beech' material in full leaf (assuming worst case that the trees are in full leaf for 365 days of the year). Consequently, despite the time period being used when the trees were not in leaf, this would have limited bearing on the outcome of the results in terms of daylight as the study covers the full year based on trees being in full leaf. This will of course be different in reality and indeed better during periods when trees are not in leaf.
5. In terms of sunlight, the study assumes a 'European Beech' in bare leaf and assumes that the development will face less obstruction from dense leaf

coverage, as it is conducted when trees are not fully leafed and is said to be tested on any date between February 1st and March 21st.

6. The study uses the industry standard methodology as prescribed by the Building Research Establishment (BRE) and British Standard Guidance.
7. The results of the study show that all habitable rooms tested meet and are in excess of the minimum requirements of the guidelines and thus would meet the requirements under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO relating to adequate natural light in all habitable rooms.
8. It is not unreasonable for the Council to raise concerns about the management of the trees through the prior approval process and the impact of the trees on the proposed development which informed its decision given the close proximity of the trees. It is also not unreasonable for the Council to raise concern regarding the contents of a technical study. However, the Council's Officer report fails to provide justification for this particularly taking into account the overall methodology used and findings of the study. No technical critique has been made of the submitted assessment to support their concerns and inaccurate assertions about the proposals impact were therefore made.
9. To my mind, the Council has been unable to clearly substantiate why the proposed development fails to meet the requirements under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO relating to adequate natural light in all habitable rooms.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to matters concerning adequate natural light and that a full award of costs is justified.
11. Separately, it is asserted that the Council has acted unreasonably in failing to co-operate with the appellant and incurring unnecessary delays at application stage. However, PPG¹ is clear that costs awarded cannot be claimed for the period during the determination of the planning application. Consequently, this element of the appellants' submission is not eligible for an award of costs.

Costs Order

12. 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 Harrogate Borough Council shall pay to Bramhope Property and Investments Limited the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Harrogate Borough Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

N Teasdale

INSPECTOR

¹ Paragraph ID: 16-033-20140306