



Costs Decision

Site visit made on 28 November 2023

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2024

Costs application in relation to Appeals Ref: APP/W5780/W/23/3323964 and APP/W5780/W/23/3323965

89-95 Aldersbrook Road, Wanstead E12 5DG

- 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 Halliard Property Co Limited for a full award of costs against the Council of the London Borough of Redbridge.
 - The appeal was against the refusal for the development of land without complying with conditions 4, 5 and 6 attached to planning permission Ref 2687/22.
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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 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 appellant's claim for costs relies on the lack of co-operation and engagement from the Council as well as whether they considered a fallback position appropriately.
4. The Council imposed conditions 4, 5 and 6 without consulting with the appellant, but as these conditions were not pre-commencement conditions there was no requirement for them to do so. The appellant considered that the reasons for imposing the conditions were incorrect and raised this with the Council before the decision was issued. Despite this, the Council still issued the decision.
5. I have found that the conditions imposed were not necessary, but I do not find the Council were wrong in doing so without consulting with the appellant and it is clear that they greatly encourage pre-applications discussions which is not something that the appellant decided to proceed with before submitting the application.
6. I can appreciate the appellant's frustration with the Council with their lack of engagement following determination. However, they were not wrong to refuse the applications based on the information they had and are not obliged to request further information. I note that the updated noise assessment and technical note have addressed a number of concerns and as a result pre-application advice that has been submitted since the applications determination has had a more favourable response.

7. Notwithstanding the co-operation and engagement from the Council, I find that the fallback position advanced by the appellant, which includes the largely unrestricted hours of operation, delivery times and vehicle weight limits for the existing retail units was not accessed by the Council in considering the applications.
8. This fallback position is an important consideration during the course of the associated appeals and should have been considered by the Council through the application to remove these conditions. It was advanced by the appellant and there is no reason why this wasn't addressed as part of the Councils reasoning.
9. I have found that the updated noise assessment and highways note has addressed the Councils reasons for refusal and the variation and removal of conditions. However, despite this, in the absence of these updated reports I would have found the fallback to be a strong material consideration that could have outweighed the Councils concerns. While the Council may have come to a different view on the fallback position, they have chosen not to address this and in the absence of which I find that the appeal is unnecessary.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs order

11. 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 Redbridge shall pay to Halliard Property Co 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.
12. The applicant is now invited to submit to the Council of the London Borough of Redbridge, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Wilson

INSPECTOR