



Costs Decision

Hearing held on 10 January 2024

Site visit made on 10 January 2024

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2024

Costs application in relation to Appeal Ref: APP/N1730/W/23/3327771 Guidion House, Rye Close, Fleet GU51 2UY

- 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 Caudwell Properties (102) Ltd for a full award of costs against Hart District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of an existing office building and erection of new industrial units for flexible uses falling within Research and Development (Use Class E(g)(ii)), light industry (Use Class E(g)(iii)), general industry (Use Class B2) and storage and distribution (Use Class B8) with ancillary offices without complying with conditions attached to planning permission Ref 21/02894/AMCON, dated 1 June 2022
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Decision

1. The application for an award of costs is refused.

The submissions for Caudwell Properties (102) Ltd

2. The costs application was submitted in writing. The final comments were made orally. Details of the oral submission is set out in the Annexe at the end of this decision.

The response by Hart District Council

3. The response was made in writing.

Reasons

4. 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.
5. The substantive points in the appellant's case are that the Council has failed to substantiate each reason for refusal at appeal and has made vague generalised or inaccurate assertions about a proposal's impact, unsupported by an objective analysis. Consequently, that it has prevented or delayed development which should clearly be permitted. Furthermore, that they have imposed a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
6. The Council had before it detailed reports from the appellant's professional noise consultants and the Council's technical Environmental Health officer and the professional planning officer which provided support for the scheme.

7. Nevertheless, the Council's submitted appeal statement covers an analysis of the submitted noise information and also concludes that the level of impact set out in the technical statements would be harmful to residential amenity due to the difference in individual's sensitivity to noise. The PPG states 'The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected'. I am satisfied that the Councils' evidence suitably substantiates the suggested reason for refusal at appeal in this case.
8. Whilst it can also be seen in my main decision that I conclude that there would not be an unacceptable effect on living conditions. The Council has demonstrated a reasonable basis for its position and I do not find that this is development that should clearly be permitted.
9. It can be seen from my main decision that condition 7 is not reasonable and conditions 15 and 16 are not necessary. However, for the reasons above and taking into account that this is not development that should clearly be permitted, the Council has not behaved unreasonably in defending its position to impose the conditions in dispute.
10. Although the determination of the application took longer than the prescribed period for a decision, there was dialogue between the parties during this time, and I do not find that determination was unreasonably delayed in this regard.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

H Miles

INSPECTOR

Annexe: Submission made orally at the hearing

Final comments for Caudwell Properties (102) Ltd

In response to 1.4 where the Council says 'failure to determine the application is not, of itself, evidence of unreasonableness'. That is not the appellant's case in terms of the cost application. We are not saying that it wasn't open to the Council to simply fail to determine the application, but our case is that, on the evidence, clearly they should have determined it and they should have granted planning permission.

1.7: We submit that the Council's response is unreasonable. There is ample case law that supports the argument that where there is no evidence provided by an LPA that renders their decision making irrational and unreasonable and on the suggestion in their paragraph that it is permissive to allow a subjective view I make this point - we are dealing with noise. This is not advisory as in the case of a landscape argument where we could say we could reasonably disagree over whether there is harm or not. Where the issue is noise, if the impact is not sufficiently material in terms of decibels, there is simply no planning harm.

1.12: The first point that 'the amenity impact is a higher standard than the assessment of nuisance in environmental terms'. I don't have the source for that assertion stated anywhere and it doesn't seem to be part of the Council's planning policy and is not in the NPPF.

1.14: Apart from Mr Berry who has been in post for 6 days none of the planning professionals at the Council agree with the Councillor and it remains the case. The Council's position is inconsistent with the appellant's evidence and professional evidence but also inconsistent and contrary to the EH officer who attended the hearing today, unsupported by any objection from the highway authority and contrary to the professional views expressed by Ms Harris the case officer twice.

1.16 which says the conditions were not previously appealed. The appellant was not asked, members simply imposed conditions. Of course as one would expect the appellant wanted to make sure it was the 2 conditions that were problematic from the occupier perspective. I'm sure if we had come forward sooner it would have been said that we have no evidence that the conditions are causing a problem.

In conclusion the appellant submits that its cost application is well founded and it should be granted in full.