



Costs Decision

Site visit made on 29 January 2024

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2024

Costs application in relation to Appeal Ref: APP/F5540/W/23/3323037 891 Great West Road, Hounslow, Isleworth TW7 5PD

- 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 the Council of the London Borough of Hounslow for a full award of costs against Howarth Homes.
 - The appeal was against the refusal of planning permission for erection of 2 residential blocks to provide 51 residential units with associated works including repair/restoration of locally listed building following partial demolition of existing buildings and retention/restoration of rear historic wall.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may only 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. Examples of procedural unreasonable behaviour set out in paragraph 047 include 'delay in providing information or other failure to adhere to deadlines' and 'lack of cooperation with the other party or parties'.
3. The Council is applying for an award of costs in relation to the preparation of a section 106 legal agreement which was provided in the form of a Unilateral Undertaking. Whilst not a specific reason for refusal, the Council's officer report and appeal statement refer to the need for the proposal to provide affordable housing; make provision for a carbon off-set contribution; local park contribution; loss of employment mitigation contribution; the considerate contractor scheme; construction training contribution; and the restriction on Resident's parking permits and the need for these to be secured via a s106 legal agreement.
4. A s106 legal agreement was not submitted with the planning application or initially with the appeal. An extension of the deadline to submit the legal agreement to the Planning Inspectorate was requested to 23 January 2024. A further extension was sought until 12 February 2024 and the s106 legal agreement was received on this date in the form of a s106 Unilateral Undertaking (UU) dated 12 February 2024.
5. The Council considers that the applicant has behaved unreasonably and that it has gone to wasted expense due to the late arrival of the s106 UU and are seeking a full award for costs incurred in relation to the preparation and negotiation of a legal agreement. At the time the Council submitted the costs

application (9 February 2024), the s106 UU had not been received. Whilst the Council indicated that it was prepared to draft the s106 agreement, no undertaking had been given by the applicant that it would pay the Council's legal fees.

6. The Council considers that it has incurred costs in appointing lawyers; sending instructions and documents to such lawyers; lawyers chasing the applicant's lawyers; the case officer chasing the applicant; correspondence with the Planning Inspectorate when the applicant has not been forthcoming.
7. Whilst it is unfortunate that there were delays in submitting the s106 UU, the applicant endeavoured to keep the Council and the Planning Inspectorate informed and formally requested extensions of time. It also explained that the delay was due to the owner of the site refinancing the land. I do not, therefore, consider that the appellant has behaved unreasonably.
8. Evidence has been submitted in support of the application showing the exchange of emails and correspondence between the Council and the applicant and also with the Planning Inspectorate with regards to the s106 UU. When dealing with an appeal where a s106 legal agreement is required, there will always be a degree of negotiation between the Council and appellant with regards to the form and content of the s106; the heads of terms; and the drafting of the document. Furthermore, there would always be an element of chasing up parties with regards to the submission of documents by certain deadlines.
9. The Council has not drafted the S106 UU as this was done by the applicant. It also confirms that there have been no negotiations to date and that a copy of the s106 UU had not been submitted at the point at which the Council submitted its costs application. Other than the exchange of email correspondence, the Council has not undertaken any detailed work on the s106 UU. I do not, therefore, consider that the Council has undertaken any work or incurred any costs which would not normally be expected when dealing with an appeal which involves a s106 legal agreement. Consequently, even were I to conclude that the applicant had behaved unreasonably, the Council has not demonstrated that it has incurred unnecessary or wasted expense in connection with this matter.

Conclusion

10. For the reasons stated, I conclude that the applicant has not acted unreasonably. In these circumstances, it is not necessary to consider the question of any expense incurred. Since unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, the application cannot succeed.

Caroline Mulloy

Inspector