



Costs Decision

Site visit made on 14 May 2024

by Chris Couper BA (Hons) DiP TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Costs application in relation to Appeal Ref: APP/M5450/W/23/3332879 108 Imperial Drive, North Harrow, Harrow HA2 7HT

- 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 Mean3 UK Limited for a full award of costs against Harrow Council.
 - The appeal was against the grant subject to conditions of planning permission for the conversion of a dwelling into two flats (1 x 3 bed) and (1 x 2 bed); single and two storey side extension; single and two storey rear extension; front porch; alterations to roof; rear dormer; rooflights in front and side roofslopes; landscaping; external alterations (demolition of porch and detached garage).
-

Decision

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

Reasons

2. The Planning Practice Guidance ('PPG') states in its section on Appeals that the aim of the costs regime is, amongst other things, to encourage all those involved in planning appeals to behave in a reasonable way and to follow good practice. It 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. An award of costs may result from either procedural or substantive matters. At ID: 16-049-20140306, amongst examples of when a substantive award may be made against a local planning authority, it cites imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework ('Framework').
4. A non-exhaustive list of examples of unreasonable behaviour which may result in an award of costs against a local planning authority on procedural grounds is provided at ID: 16-047-20140306. This includes introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
5. The applicant claims that the Council did not provide clear justification for imposing the disputed condition by reference to the development plan, or to the potential impacts of small Houses in Multiple Occupation ('HMO') in this particular case, and that it instead cited vague and generalised concerns.

6. The Council sets out that neither the description of the proposed development, the planning statement, nor any other supporting documentation provided at application stage, referred to the property's use as HMO, and that it was reasonable for it to therefore impose a condition to ensure that it would be used as flats in accordance with the submitted information. It continues that had the applicant made it clear that the property's use as HMO was also to be considered, then it would have made an assessment of such a use.
7. For my part, I note that the Town and Country Planning (General Permitted Development) Order 2015 (as amended) ('GPDO') sets out a whole range of permitted development rights. It is not incumbent upon an applicant to point out to the Council what those permitted development rights are as part of a planning application, nor for it to inform the Council that it might choose to implement them.
8. Furthermore, if the Council decides to withdraw such permitted development rights, having regard to the PPG advice on the Use of Planning Conditions, and the stance at paragraphs 55 and 56 of the Framework, the onus is clearly on it to justify such an approach, having regard to the relevant tests.
9. In this case, the Council's condition No 10 removed permitted development rights granted under Schedule 2, Part 3, Class L of the GPDO. However, the Council's delegated report provided no explanation for the imposition of that condition, and the reason given in its decision notice was very generic, citing the need to maintain mixed, balanced, sustainable and inclusive communities, and in the interests of residential and visual amenity.
10. In my appeal decision, I have found that the Council's appeal statement is similarly vague, and makes no persuasive case that the development without the condition would disrupt the balance of the community; nor, having regard to the particular circumstances at this site in this location how, without the condition, the development would harm residential and visual amenity.
11. In its Cost Rebuttal Statement, the Council refers to appeal decisions elsewhere in the borough, where an Inspector imposed a condition withdrawing permitted development rights under Schedule 2, Part 3, Class L of the GPDO. I do not have the full details of all those cases. However, irrespective of that, the Council in this particular case did not adequately justify at application stage why the condition was imposed, as it was required to do, thus resulting in this appeal. Nor did it adequately set out at application or appeal stage, why this development in this location would be unacceptable without the disputed condition, and therefore why the condition is reasonable and necessary.
12. Although the Council introduced a new argument at appeal stage that the condition was necessary on grounds related to parking, highways and transport impacts, it provided little or no evidence to substantiate that. That said, given the very limited evidence submitted, that in itself did not result in the applicant incurring any significant additional work or expense.
13. However, for the above reasons, the Council imposed a condition that it did not adequately justify having regard to the Framework's tests of necessity and reasonableness, thus resulting in the applicant incurring unnecessary or wasted expense in the appeal process, as described in the PPG. A full award of costs is therefore justified.

Costs Order

14. 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 Harrow Council shall pay to Mean3 UK 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.
15. The applicant is now invited to submit to Harrow 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.

Chris Couper

INSPECTOR