



Costs Decision

Site visit made on 19 August 2024

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2024

Costs application in relation to Appeal Ref: APP/R5510/W/24/3338978 5-7 Hercies Road, Uxbridge UB10 9LS

- 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 Mr Paul Anastasi of Topland Property Services Hackney Ltd for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the refusal of planning permission for the change of use from Use Class E to mixed use of Class E and Sui Generis (Massage and Beauty Shop) and merging shop nos. 5-7 & 9-11 into one single unit.
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Decision

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

Reasons

2. 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.
3. The applicant seeks a full award of costs including because it is argued that the Council, in refusing the application based on the lack of drawings showing that no change would occur to the external elevations, has not acted consistently with other applications, in particular when the same proposal was applied for at 9-11 Hercies Road. The case is also made that the Council was unreasonable as it could have imposed a condition requiring the applicant to submit for approval any external changes and this would have allowed the scheme to proceed without delay.
4. The applicant also highlights the subsequent planning permission for the same use which included the external elevations and which showed that there would be no external change. It is argued that this underscored the unnecessary nature of the Council's insistence of elevation drawings, which did not materially contribute to its assessment of the proposed change of use. The case is made that such demands appear disproportionate and indicative of unreasonable conduct on behalf of the Council.
5. The Council has responded and strongly refutes the assertion that it has been unreasonable and judges that the analysis in the planning report is sound and substantiates the reason for refusal. The Council argue that the requirement for elevational drawings to confirm that no works to the shop front would be required is justified. It is argued that there are clear differences between the case at Nos 9-11, and the other examples that the applicant highlights, because of the potential harm that could result from the amalgamation of four units which was considered material to the determination of the planning

- application. The Council explain that there are multiple examples of commercial unit amalgamation where elevational drawings have been provided and in its appeal statement explains that this is a national requirement and set out in detail in the Council's Local Planning Validation Checklist (February 2024).
6. The Council has made the case that explaining in written form that the shop fronts would not be changed does not constitute adequate evidence to demonstrate such that this could be secured and approved within the decision notice.
 7. Examining these matters, the information which accompanies the appeal shows that when the application was submitted, the Council wrote to the applicant to explain that the application could not be registered until Existing and Proposed Elevation Plans at a scale 1:50 or 1:100 were submitted. The applicant responded by explaining that since the proposal was only for a change of use application without any external alteration, the applicant understood that existing and proposed floor plans should be sufficient for the validation and application purpose as per previous approval for No. 9-11. The Council again queried this asking for further confirmation of any external changes and commented that if (the development is) solely internal we do not require elevational drawings. The applicant again provided this confirmation in writing and the Council subsequently validated the application.
 8. By way of background, the PPG explains that as a minimum, applicants will need to submit a 'location plan' that shows the application site in relation to the surrounding area. It is further explained that additional plans and drawings will in most cases be necessary to describe the proposed development, as required by the legislation (the PPG references article 7(1)(c)(ii) of the Town and Country Planning (Development Management Procedure (England) (Order) 2015). This part of the Procedure Order does not specify the precise range of additional plans which will be required in each case and, therefore, whether elevation plans are required is a matter of consideration dependent on the circumstances of the proposal.
 9. Furthermore, legislation¹ requires that requests by a Council for the inclusion of particulars and evidence in an application must be reasonable having regard, in particular, to the nature and scale of the proposed development and may require particulars of, or evidence about, a matter only if it is reasonable to think that the matter will be a material consideration in the determination of the application.
 10. The Council sought to further justify the requirement for first seeking and then refusing the application based on a lack of existing and proposed elevation plans with regard to its stated National Requirement List on page 5 of its Validation Checklist. This part of the checklist does list a requirement for existing and proposed elevations in respect of Full Planning Applications (Major and Minor). However, as analysed in paragraph 8 above, the legislation does not always necessitate such plans.
 11. Even more crucially in this case is that, further on in the Council's Validation Checklist document, are validation checklists for other types of development.

¹ Section 62 (4A) of the Town and Country Planning Act 1990 (inserted by the Growth and Infrastructure Act 2013)

- These include checklists for Full Planning Application for Change of Use (no external work) and Full Planning Application for Change of Use (external work).
12. The checklist for Full Planning Application for Change of Use (no external work) does not require existing and proposed elevation plans, while a change of use with external works does. I consider that the requirements for the Change of Use (no external work) is the directly relevant checklist for this proposal. Consequently, it was correct for the Council, in accordance with its published Validation Checklist, once it had received confirmation from the applicant that there was to be no external works, to register the application as the requirements of this checklist had been met.
 13. The information from the applicant was clear that no external works were proposed. I consider that there was no reason why this should not have been accepted during the processing of the application as it had been at the validation stage. A plan was not necessary to show the same elevations, before and afterwards with the same details and no works, to confirm this situation.
 14. It may or may not be the case that external works will be proposed in due course, but they are separate from the change of use proposal and the information indicates that external works are not a prerequisite to facilitate the use as proposed on the layout plan. Consequently, I consider that the Council had sufficient information before it to be able to decide the application and that refusing the application based on seeking a plan that was not necessary amounts to unreasonable behaviour, especially having regard to the modest nature and scale of the proposal and its location.
 15. This judgement is reinforced because, when the Council considered the subsequent planning application for the same change of use but with a before and after elevation plan which showed no changes, it was satisfied with the scheme and granted planning permission. The Council could have just as easily reached that conclusion without a plan, and should have relied on the written statement of the applicant. If it had done so, the refusal, and then the subsequent appeal, could have been avoided.
 16. Questions as to whether a condition could have addressed the lack of elevation plans are not, therefore, an issue, although in any case such a condition would not have been necessary given the details which accompanied the proposal. I have also not needed to look at issues of consistency which are raised by the applicant, and defended by the Council, as the circumstances of this case demonstrate that the Council has acted unreasonably.
 17. Consequently, I consider that the Council have prevented or delayed development which should have clearly been permitted, have made vague and generalised assertions about a proposal's impact which were not supported by any objective analysis, and have granted planning permission on an identical proposal (albeit one with a plan that demonstrates the lack of external works compared to a written statement to that effect) which highlights the wasted costs that resulted at the appeal stage. The appeal could have been avoided and I find, as a consequence, unreasonable behaviour that has led to unnecessary and wasted expense in the appeal process.

Conclusion

18. In the light of the above analysis, I have found 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

19. 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 Hillingdon shall pay to Mr Paul Anastasi of Topland Property Services Hackney Ltd, 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.
20. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

David Wyborn

INSPECTOR