The Planning Inspectorate

Costs Decision

Site visit made on 26 June 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 September 2024

Costs application in relation to Appeal Ref: APP/L5810/W/23/3328268
189 Waldegrave Road (including land at the rear of 189-207 Waldegrave Road), Teddington TW11 8LX

- 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 Matthew Allchurch, Waldegrave Mews Limited for a full award of costs against Richmond Upon Thames Borough Council.
- The appeal was against the refusal of planning permission for change of use and alterations to no.189 Waldegrave Road to create one ground floor commercial unit and 3 no. one-bedroom residential apartments; creation of a disabled car parking space on the Waldegrave Road frontage; demolition of all existing buildings at the rear of no. 189-207 Waldegrave Road and the erection of two residential blocks (one two-storey and a part two, part three-storey building) comprising 15 no. residential apartments (8 x one bedroom and 7 x two-bedroom); erection of cycle storage and recycling structure; landscaping.

Decision

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

Reasons

2. Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, 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. In particular, the applicant has referred me to paragraphs 027-050 of the PPG.

3. The applicant's application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense for procedural and substantive reasons, as considered below.

4. In respect of procedural matters, I am advised that a case officer refused to provide consultee responses at the application stage. Although the Council has provided an e-mail which highlights concerns raised about the proposal, this does not address withholding consultee responses. Had the applicant been provided with the full details of the consultee responses, this may have assisted in resolving some of the reasons for refusal. As such, the withholding of consultee responses constitutes unreasonable behaviour.

5. The applicant also submitted a letter to the Council after it had made its decision on the application. The Council replied to this via e-mail. Whilst the applicant may not find the response satisfactory, this in itself does not constitute unreasonable behaviour.

6. In respect of substantive matters, these relate to the Council's reasons for refusal. I have considered these as part of my Decision and therefore do not intend to go into the detail of these. The first reason for refusal ('RfR') relates to the loss of employment/business use at the rear of the site and in part to the loss of commercial floorspace. The reason is clear that the total loss of employment floorspace at the rear of the site and the reduction of the size of the commercial unit have not been justified. In its assessment, the Council also had regard to the applicant's Marketing Information.

7. The applicant advises that the perceived short-comings in respect of the Marketing Information were unknown until the application had been determined despite requests being made by the applicant. Even so, the requirements of marketing information are clearly set out in the development plan. As to whether the submitted information fully addressed the Council's requirements, this is a matter of planning judgement for the decision maker. To this end, I am satisfied that the Council's Officer Report provides sufficient assessment in respect of this RfR which is also supported by development plan policies.

8. The second RfR relates to the effect of the proposal on the character and appearance of the area. The Council's assessment of this matter is set out in its Officer Report. I am mindful that the assessment of this issue involves some objective and subjective analysis having regard to the context of the site, the proposal and the development plan and any other considerations. To this end, in respect of the proposed extensions and alterations to 189 Waldegrave Road (Block A), I am satisfied that this is adequately assessed in the Council's Officer Report and supported by relevant development plan policies.

9. However, in respect of proposed Blocks B and C, it does appear that the Council's assessment is limited. In particular, the Council's assertions with regard to concerns about design, height, scale, bulk and mass appear largely vague and unsubstantiated. Despite this, because this reason for refusal also relates to Block A, overall this is a valid RfR.

10. The third RfR, in part relates to the impact on highway safety as a consequence of the alleged increase in width of the side access to the appeal site. However, no such alteration is proposed. As such, it is unreasonable for the Council to assume this. Nevertheless, this RfR also relates to the effects of the proposal being a 'car-free' development. To this end, the third RfR is clearly supported by an adequate assessment of this issue within the Officer Report and refers to development plan policies. Also, there is nothing to suggest that the Council did not have regard to the applicant's submissions in making its assessment. Accordingly, and irrespective of the matter of the access, the third RfR is valid.

11. In respect of the fourth and fifth RfR, on the information before me, it would appear that these matters were capable of being resolved at the application stage had the Council sought further information from the applicant. Notwithstanding this, in its Statement of Case, the Council acknowledged that in light of the additional information provided by the applicant, the concerns raised in respect of the fourth and fifth RfR had been addressed. Consequently, I do not consider that the applicant has incurred any costs in defending these RfR at appeal.

12. RfR six relates to the lack of affordable housing provision. Whilst I do not dispute the applicant's intention to provide this in accordance with the agreed

viability position between the main parties, no legal agreement had been provided at the time the Council determined the application to secure this. As such, and given the conflict with the development plan, this is a valid reason for refusal.

13. The seventh RfR is in respect of the living conditions of neighbours. Whilst some of the Officers dealing with the application may not have visited the site, there is evidence to suggest that some officers did. Although the applicant asserts that the Council relied on inaccurate records, officers would have also had access to the applicant's submissions. Indeed, the Council's Officer Report refers to the applicant's Sunlight, Daylight and Overshadowing Report. As to how much weight is attached to this is a matter for the decision maker. Also, based on my Decision, I am not satisfied that all concerns regarding overlooking could have been addressed by conditions.

14. Overall, the Council's submissions provide an adequate assessment of the effects of the proposal on the living conditions of neighbours and this is supported by development plan policies.

15. The eighth RfR relates to the effects of the proposal on an existing Sycamore tree ('T5'). The submitted Arboricultural Survey, Impact Assessment and Method Statement ('Tree Report') includes an assessment of T5 and concludes that, subject to the recommendations in the Tree Report, this is to be retained and protected.

16. Although the Council's Tree Officer recommended that T5 should be removed and replaced with landscaping, there was no objection to the proposal. However, the Officer's Report says that because Block C would be taller than the existing building, insufficient information had been provided to demonstrate that the proposal would not have a detrimental impact on T5. In light of the Tree Report and in the absence of any alternative technical evidence, this assertion is vague and unsubstantiated and constitutes unreasonable behaviour.

17. The ninth RfR alleges the failure of the proposal to demonstrate adequate drainage to serve the scheme. This is supported by the response of the Local Lead Flood Authority and development plan policies. In particular, this RfR relates to complying with the drainage hierarchy and runoff rates. This necessitated a revised Flood Risk Assessment. Therefore, I am not persuaded that the required information related to minor points which could have been addressed during the application process or by way of condition(s).

18. The tenth and eleventh RfR relate to the Fire Statement and Sustainability, respectively. Although reports were submitted to address these matters, the Council requested additional fees to fund independent reviews of these reports. I have not been referred to any policy requirement for this under the current development plan. Even so, this appears to be part of the Council's development management process and the applicant was made aware of this at pre-application stage. As such, and despite finding in favour of the applicant in respect of RfR ten and eleven, I do not consider this constitutes unreasonable behaviour.

19. Drawing on the above reasons, the Council acted unreasonably with regard to failing to provide the applicant with consultee responses and the reason for refusal concerning T5.

20. However, to make an award of costs, I need to be satisfied that these matters resulted in unnecessary or wasted expense in the appeal process.

21. In this case the Council's reasons for refusal relate to a number of other matters. Therefore, while I cannot be certain, it seems likely that even if the Council had provided the applicant with consultee responses and had not included the RfR in respect of T5, this would not have altered the Council's decision to refuse the planning application on the matters relating to the loss of employment land, character and appearance, living conditions, highway safety and affordable housing. Therefore, an appeal could not have been avoided.

22. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full award of costs is not justified.

M Aqbal

INSPECTOR