



Costs Decision

Hearing held on 21 August 2024

Site visit made on 21 August 2024

by H Butcher BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2024

Costs application in relation to Appeal Ref: APP/U5360/W/24/3341333 Clifton House 75-77 Worship Street and 10 Holywell Row, London EC2A 2DU

- 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 Adjoin Limited for a full or partial award of costs against the Council of the London Borough of Hackney.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for: Refurbishment and extension of Clifton House to provide additional office floorspace and flexible Class E floorspace at part ground and part lower ground level, including extension of existing fifth floor and two additional storeys with the uppermost floor to be a set-back pavilion with roof terraces and plant; demolition and rebuild of 10 Holywell Row to provide six storeys (plus lower ground) of office floorspace (Class E); external alterations to the existing buildings including replacement windows, lowering of the ground floor building entrance to improve accessibility and other associated ancillary works and alterations.
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Decision

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

The submissions for Adjoin Limited

2. The costs application was submitted in writing. The following additional points were made orally:
3. The appellant re-stated concerns over the delay in validation. It was also highlighted that they were not provided with putative reasons for refusal until the intervention of The Planning Inspectorate. Other issues in respect of the handling of the application and the use of design review panels were raised. Therefore, a full award of costs is sought.
4. Alternatively, a partial award is sought in respect of putative reasons for refusal being given which were capable of being dealt with by condition/legal agreement. Whilst the compromise finally reached on provision of affordable workspace was reasonable this should have been done sooner.

The response by the Council of the London Borough of Hackney

5. The response was made in writing. The following additional points were made orally:
6. The Council set out that they had compromised on matters and took a pragmatic approach in order to get agreement on the day of the hearing. Some

of the evidence submitted at appeal was not available to them prior to the appeal.

Reasons

7. 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.
8. In this case the Council were asked to provide putative reasons for refusal by The Planning Inspectorate in the early stages of the appeal to inform the proceedings. The Council were not forthcoming in responding, preferring to include these in their Statement of Case, but did, nevertheless, when pressed, provide these. Given the Council had previously stated to the appellant that they were going to refuse planning permission the reasons for refusal should have been able to be provided promptly when requested, if not earlier than this. The PPG is clear that co-operation is required in the appeal process. Furthermore, it states that in any appeal against non-determination the Council should explain why permission would not have been granted had the application been determined within the relevant period.
9. When the Council's Statement was received a number of the previous putative reasons for refusal had fallen away as further information had been received and/or they were now considered to be resolvable by way of condition/legal agreement. An additional putative reason for refusal was also submitted in respect of the provision of 'affordable workspace'. It will be seen from my decision that this matter was also capable of resolution by way of legal agreement, albeit getting to this point did result in a lengthy adjournment during the hearing. These matters were therefore all capable of prompt resolution. The PPG is clear that the Council should review their case promptly following the lodging of an appeal against non-determination.
10. Taking these points together I find that the Council acted unreasonably. This resulted in unnecessary work being undertaken by the appellant on matters capable of resolution by alternative means and wasted hearing time. Therefore, unnecessary and wasted expense was incurred by the appellant. A partial award of costs is therefore granted.
11. In terms of the appellant's concerns over delays at application stage, costs can only be awarded in relation to unnecessary or wasted expense at the appeal, albeit behaviour and actions at the time of the planning application can be taken into account. In this case specifically, the Council have explained the reasons for delay. Furthermore, as shown by the outcome of the appeal, the Council had relevant concerns in respect of heritage. I therefore find no unreasonable behaviour in this regard. This does not, however, alter my findings above.

Costs Order

12. 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 Hackney shall pay to Adjoin Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in producing evidence in respect of matters pertaining

to 'drainage,' 'sustainability', 'urban greening factor' and 'affordable workspace'; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to the Council of the London Borough of Hackney, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

H Butcher

INSPECTOR