



Costs Decision

Hearing held on 17 July 2024

Site visit made on 17 July 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st of October 2024

Costs application in relation to Appeal Ref: APP/H5390/W/24/3340599 6 Grove Mews, London W6 7HS

- 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 NTA Planning LLP for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for an approval of details required by conditions of a planning permission Ref 2022/03706/FUL.
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Decision

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

Preliminary Matters

2. A written costs application, response and final comments were made before the hearing. Further oral submissions were made by the applicant then the Council during the hearing. I have taken account of all these comments in my decision, except those by the applicant about the alleged character or behaviour of a Council environmental officer which I do not know to be true.
3. Awards cannot extend to compensation for indirect losses, such as alleged by the applicant in this case from delay in obtaining planning permission or approval of details of conditions. But parties are expected to behave reasonably throughout the planning process. The planning permission granted by the Council is not the subject of the appeal, but actions at the time of the approval of details application (ADA)¹ can be taken into account in considering whether or not costs should be awarded.
4. The applicant did not state if the application is for a full or partial award of costs. However, having regard to the costs submissions and the matters in dispute clarified at the hearing, it is evident that a full award of costs is sought. I have determined the application on this basis.

Reasons

5. Parties in planning appeals normally meet their own expenses. However, 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. Both criteria must be sustained for a successful award. Costs may include, for example, the time spent by the applicant and its representatives in preparing appeal statement(s) and supporting documentation and preparing for and

¹ 2023/01258/DET

- attending the appeal, including expert consultants to provide detailed technical advice. Also, the expense of making and defending the costs application.
6. Because of the appeal the Council was no longer able to make a decision on the ADA. There had, though, by then already been a significant elapse of time (well over 6 months) since it had been submitted. Even after the applicant's final revision to its preliminary risk assessment (the PRA)², and despite a further meeting, the Council had made no decision by the time the appeal was lodged, some 6 additional weeks later. It is evident from the extracts or exchanges of correspondence before me that there was no apparent likelihood of the Council agreeing with the applicant in respect of any or all of condition Nos.11 to 16, including because respective positions had become entrenched. The applicant instead elected to resolve matters through the appeal process.
 7. At the hearing the Council reiterated that it had no substantive concerns with the details for condition Nos.3 to 5. Although submitted as part of a single application these details were independent of details in condition Nos.11 to 16. There is no apparent reason why the Council could not have approved the details for condition Nos.3 to 5 sooner. At the Council's request the applicant's initial preliminary risk assessment was prepared and submitted then revised during its consideration of the ADA. The substantive reasons set out in the Council's appeal statement for not approving the PRA were because of alleged deficiencies in its technical scope or content, that the site was Part 2A potentially contaminated land and that intrusive site investigation was required, including details for condition Nos.12 to 16.
 8. The Council's environmental officer at the hearing was not the same officer that had engaged with the applicant throughout the Council's consideration of the ADA, who was unable to attend the hearing at short notice. Nevertheless, what I have outlined above essentially remained the Council's apparent position in advance of the hearing. These were the same barriers that informed the applicant's decision to lodge the appeal. My pre-hearing note #1 requested, inter alia, that the Council review its case promptly, including with respect to any additional or new evidence which may otherwise have the potential to cause an award of costs. In the appeal, the applicant also had to maintain its position with regard to condition Nos.3 to 5 and especially (despite not incurring costs in preparing and submitting details) condition Nos.12 to 16 as part of its case.
 9. At the hearing the Council no longer had any substantive concerns with the technical scope or content of the PRA. This was even though it had not been altered since the appeal was lodged and remained as it was when the Council could still have determined the ADA. It also confirmed it had been a mapping error to assert that the site was Part 2A potentially contaminated land. But these were nonetheless main reasons underpinning the Council's resistance to approve the PRA and insist on intrusive site investigation. The Council instead advanced that the matters in dispute, including as reason for intrusive site investigation, were now about a comparatively narrow, albeit important, difference of professional judgement on certain findings and conclusions in the PRA (the probability or likelihood and consequence or severity of two potential sources of land contamination and level of risk of potential land contamination). However, this stance had not been previously revealed,

² IDOM Phase 1 Environmental Assessment (Desk Study) Rev C January 2024, Ref DS-22577-23-183

including that I have not been informed that it was explicitly or specifically referred to in the Council's appeal statement or in the extracts of exchanges of correspondence before me during the Council's consideration of the ADA.

10. My appeal decision has resolved these matters in dispute. While there was no need for adjournment, the Council nonetheless introduced fresh and substantial oral evidence in the hearing at this late stage. It also relied on information that was manifestly inaccurate and made vague, generalised or inaccurate assertions about ground conditions and relevant intrusive site investigation evidence that it had previously approved, unsupported by any objective analysis of its own to the contrary. This was unreasonable.
11. These events transpired after it did not exercise its duty to reasonably determine the ADA and approve the PRA to begin with. It continued to defend a new position at appeal in circumstances where its own development plan, planning practice guidance and national planning policy indicated that approval of the PRA should have reasonably been given. Nor was there any apparent reason why condition Nos.3 to 5 should not already have been approved. There was, therefore, no substantive reason to justify the further inordinate delay by the Council in moving to what should have been a recommendation to grant the ADA, which otherwise prevented or delayed development which clearly should have been authorised. This would have avoided the appeal and the applicant's costs in pursuing it.
12. Furthermore, I have no reason to doubt the Council's planning officer that these 'standard' condition Nos.12 to 16 are applied by the Council to all relevant proposals or sites elsewhere in the borough. But in this case they should all have reasonably fallen away given the clear position in respect of condition No.11. The Council's environmental officer acknowledged that as worded they do not reflect the usual accepted practice of a waterfall or cascade format, with successive conditions only engaged if necessary rather than as worded and applied by the Council. This had unduly restricted commencement of otherwise acceptable development.

Conclusion

13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

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 the Council of the London Borough of Hammersmith & Fulham shall pay to NTA Planning LLP, 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. The applicant is now invited to submit to the London Borough of Hammersmith & Fulham, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Robin Buchanan

INSPECTOR