



Costs Decision

Site visit made on 4 November 2024

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 24 December 2024

Costs application in relation to Appeal Ref: APP/Y5420/W/24/3344754 2 Coniston Road, Tottenham, Haringey, London N17 0EX

- 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 Sean Doherty of Priory Homes Ltd for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was against the refusal to grant outline planning permission for the construction of a two storey 1 bedroom dwelling house with workspace/office following removal from the site of the open storage of materials and the steel container placed thereon.
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Decision

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

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 advances seven 'grounds' supporting an application for costs.

Ground 1 – Failing to properly consider the application as an outline application

4. Correspondence indicates that there was a disagreement between the applicant and the Council regarding this matter. This included the Council recommending the applicant withdrew the application. However, the Officer Report details that the application was considered as an outline application. Indeed, the application was determined without the reports/documents initially identified by the Council as being required and these were not raised in the notice of refusal.
5. As only the matter of appearance was reserved for future consideration then the Council were at liberty to consider the effect of the access, landscaping, layout and scale of the proposal in considering the application.
6. The Council therefore did not fail to consider the application as an outline application and did not act unreasonably in this regard. Due to this, the High Court judgement referred to by the applicant is not relevant to this case.

Ground 2 – Disregarding relevant facts and site's lawful fallback position

7. It is not clear whether the 2022 lawful development certificate extends across the full appeal site. There is no conclusive evidence presented to show the Council should have considered the appeal site as a separate planning unit.

Even if it had, this would not justify harmful development. Neither does the existing storage use on the site, which was acknowledged by the Council in the Officer Report and which the applicant contends constitutes a fallback position, justify harmful development.

8. The Council considered the proposal, including the site's existing use, in accordance with the policies set out in the development plan and found unacceptable harm. The reasons for refusal were reasonably detailed in the Officer Report and notice of refusal and were a matter of planning judgement for the decision maker, and opinions may differ.
9. Consequently, the Council did not unreasonably ignore or disregard relevant facts or a lawful fallback position.

Ground 3 – Introducing new issues and reasons for refusal at the last minute

10. From the correspondence provided, the Council responded in a generally proactive manner to questions raised by the applicant between 27 November 2023 and 17 February 2024. The primary focus of these discussions was related to the appropriateness of the application being in outline and the Council's request for additional information. There were no discussions by either party on the reasons for refusal until the 17 February where the Council provided a summary, and the notice of refusal was issued on the 19 February 2024.
11. The Council did advise on the 10 January 2024 that further discussions on the application were considered not to be feasible and it offered a variety of options to deal with the application including refusal. No evidence is presented to show the applicant responded directly to this correspondence or requested clarification of the reasons for refusal. The applicant had the opportunity to clarify the concerns and address these with the Council between the 10 January and 17 February. No evidence has been presented to show this was attempted.
12. I appreciate that the Council did not provide its calculations relating to the assessment of the internal space standard for the bedroom when requested and it issued its decision before the advised date of 26 February 2024. However, it is clear the Council had significant and fundamental concerns regarding the proposal and there is little evidence that, even if the applicant had been given until the 26 February, resolution of all the reasons for refusal could have been achieved.
13. Even though the applicant was surprised about the reasons for refusal and its issue of the decision was rapid after issue of its comments, there is little evidence to show these were new issues that were introduced at the last minute. There was fair and reasonable opportunity for the applicant to raise and discuss the Council's concerns during determination and specifically during the period after it intimated it was going to refuse the application. There is therefore little evidence that the Council acted unfairly or unreasonably in this regard.

Ground 4 – Misapplying policies on backland development, design and amenity

14. Policy DM7 of the Haringey Development Management DPD (July 2017) does not impose a blanket restriction on the potential for development on infill, backland and garden land. However, a key requirement of the policy is that development is required to relate appropriately and sensitively to the

surrounding area and the established street scene. The Council reasonably substantiated why it considered the proposal failed to meet this requirement. It did not act contrary to the policy.

15. The assessment of character and appearance of an area involves an element of judgement and is not a wholly objective exercise. The Council gave reasons for reaching its judgement in the Officer Report. As noted above, the Council were at liberty to consider the effect of the access, landscaping, layout and scale of the proposal. As the Council found significant harm to character and appearance from these aspects and, as they were not reserved matters, then there is little evidence that the use of planning conditions could have been reasonable or appropriate.
16. Accordingly, the Council did not rely on vague and generalised assertions or misapplied the policies on backland development, design and amenity.

Ground 5 – Relying on an unsubstantiated reason for refusal on the living space standards

17. Evidence that the applicant provided substantiation that the proposal met the minimum ceiling height of 2.5 metres for at least 75 percent of the gross internal area at the application stage has not been provided. As such, the Council made its own assessment of the ceiling height percentage and found the proposal would not meet the requirement.
18. While the Council did not respond to the applicant's requests for this assessment, there is no evidence to show that the applicant provided any supporting evidence to show the proposal would meet the living space standards including the ceiling height percentage.
19. In its appeal statement, while advising that it had corrected its assessment of the area, the Council has provided a calculation for the ceiling height percentage which shows the proposal would not meet the policy requirement. The calculation is in accordance with the policy based on the Council's assessment of gross internal floor area. While the applicant provides clarification on the proposal's internal space standards in its appeal statement, no directly comparable calculation for the ceiling height percentage is detailed.
20. I note the applicant's comments regarding the interpretation and objective approach that should be used in considering policies. However, this can only be completed if sufficient information is provided for such an assessment. While additional information has been provided in the applicant's appeal statement, little evidence has been presented that this information was provided to the Council during the determination of the application. As such there is little evidence that the Council had the information to allow it to consider the applicant's reasoning on how the proposal would meet the ceiling height percentage.
21. The Council has substantiated its assessment of the ceiling height percentage and explained the reason for refusal on the living space standards. Accordingly, the Council has not been unreasonable in this regard.

Ground 6 – Failing to consider and give weight to material considerations in favour

22. In its Officer Report, the Council acknowledged the '*housing of a container*' on the appeal site and the proposal contributing to '*the mixed supply of housing in*

the borough in a highly accessible location'. Furthermore, within its conclusion it advised that 'All other relevant policies and considerations, including equalities, have been taken into account'.

23. Levels of weight to the various matters considered were not detailed in the Officer Report. However, while it would have been helpful if a summary of the considerations had been provided in the conclusion, based on the references to the existing storage use and the housing supply in the Officer Report, there is little evidence to suggest the Council did not consider these in coming to its conclusion. There is little evidence that the Council did not comply with Section 38(6) of the Planning and Compulsory Purchase Act 2004.
24. Accordingly, there is little to show the Council did not give sufficient consideration and weight to material considerations in favour of the proposal.

Ground 7 – Procedural unfairness in light of previous decisions

25. The Council considered the application as outline and found the proposal unacceptable. The fact that an application is in outline does not justify harmful development and consideration of the application was reasonably justified by the Council. There is therefore little evidence that the Council was procedurally inconsistent with previous outline application decisions such as those identified by the applicant (LPA References: HGY/2018/1857, HGY/2022/1526 and HGY/2018/0462).
26. There is no evidence to show procedural unfairness in the Council's consideration of the application occurred.

Conclusion

27. Overall, even though I reached a different conclusion than the Council, there is little evidence that the above cost grounds, either individually or combined, demonstrate that the Council applied its planning judgement in an unreasonable or inconsistent manner.
28. Even if I had found that the Council had acted unreasonable to some of the cost ground presented, from the evidence before me, I still consider it would have led to the submission of an appeal and therefore would not have resulted in unnecessary or wasted expense.
29. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

J Symmons

INSPECTOR