Planning Inspectorate

Costs Decision

Site visit made on 11 December 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 8 January 2025

Costs application in relation to Appeal Ref: APP/T5150/X/23/3315059

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr David Syroumper ('the applicant') for a full award of costs against the Council of the London Borough of Brent ('the Council').
- The appeal was against the refusal of a certificate of lawful proposed use or development for the completion of development for which a permission was previously granted.

494-504 Neasden Lane North, LONDON, NW10 0EA

Decision

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

Background

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. The questions arising are therefore whether the Council's behaviour has been unreasonable and whether it has caused the applicant unnecessary expense.

The case for the applicant

3. As set out in the legal opinion by counsel, the LPA have simply not considered the matter with the correct tests in mind. The LPA was well aware from its own site visit that the trench had been excavated prior to the expiry of the application. The appellant made his case clear in the statement which accompanied the LDC application. The LPA simply fail to consider the facts and to apply the law accordingly. Thereby, the LPA caused an unnecessary appeal to be made, and have delayed development that should otherwise have been allowed. An application for a full cost award is therefore, hereby made.

4. The LPA appears to opine that given that the Cycle store was not the subject of a pre-commencement condition, its implementation does not begin the development. However, this is plainly wrong. There is no need for implementation works to be the subject of a pre-commencement condition, as per s.56 of the TCPA, any work comprised within the permission would begin the development. The LPA further appears to say that the hole was not observed at the site visit. This is, however, factually not true. The LPA indeed refers to the relevant trench in its report. Had the LPA approached the matter with the correct test in mind, this appeal would have been avoided and the development would not have been extensively delayed. The Inspector is therefore, respectfully asked to allow the appeal and to grant the appellant a full cost award.

The case for the Council

5. The comments set out within the delegated report which expand upon the ‘trench’ excavation referenced within the applicant’s cost report are reiterated: “In seeking to prove that the development has commenced and that the commencement has occurred on or before 29/04/2022, the applicants have submitted a Planning Statement by Eade Planning Limited and a 'Site Inspection Record' carried out by Dunwody Building Legislation in relation to Building Regulations. Specifically, the submitted inspection record document sets out that the "commencement" inspection stage has commenced on site (dated 09/03/2022) though provides no further information and no additional supporting information, such as details of which or what works that have been carried out nor any images clearly demonstrating the works have been included with this part of the submission. A small number of photographs of the site have been provided, with an annotated detail on one of the previously approved plans to confirm that a 'trench' was formed to allow for the steel works for the proposed cycle shelter. However, this would appear to be nothing but a roughly dug hole covered by a piece of board. Notwithstanding this, the lightweight cycle shelter is not considered to form the foundations of the approved building and would not in isolation confirm the commencement of development with regard to Section 56 of the Town and Country Planning Act.”

6. The application met the expected time frames and correspondence was maintained with the applicant. The hole was not clearly indicated in its setting, and in the Council’s view would not constitute the start of development given the works proposed are at first floor level – whereby the proposal was due to be carried out. The cycle parking was not conditioned to be prior to commencement (of below ground works), and therefore would not have been required to be carried out to suggest commencement of development. This hole that was not observed on site by the case officer cannot be confirmed to be development of the expired planning consent and therefore the Council does not feel costs should be awarded as the facts had been considered as to what was put before them at submission.

Reasons

7. The Council has relied on some erroneous factors in reaching its conclusions on the application. They say that the cycle shelter was not considered to form the foundations of the approved building, and that cycle parking was not conditioned to be prior to commencement and therefore would not have been required to be carried out to suggest the commencement of the development. I disagree with them on these general points because I have found that starting to build the cycle shelter could have amounted to a commencement of the development for which permission was granted, which included ‘associated external alterations and parking to the rear’.

8. The Council are nonetheless correct to say that the application lacked the necessary detail to show that the ‘trench’ was actually excavated in pursuance of the development for which permission was granted. As they say, it appears to be only a roughly dug hole covered by a piece of board. Although the Council’s reasoning went further than that, and in doing so fell into error, I do not find it possible to say that without that additional erroneous reasoning a certificate would have been granted and the appeal made unnecessary. On the contrary, I have declined to grant a certificate.

9. The Council have not accepted that the ‘trench’ amounted to the start of building the cycle shelter and thus, whatever their position on whether the preparatory works for that cycle shelter could have amounted to the start of the permitted development, it appears to me that the costs of bringing an appeal are unlikely to have been avoided.

10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Laura Renaudon

INSPECTOR