



Costs Decision

Site visit made on 5 December 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th of February 2025

Costs application in relation to Appeal Ref: APP/U5930/W/24/3350354 Lea Park Trading Estate, Unit 12, Warley Close, Leyton E10 7LF

- 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 Marc Rowan for a full award of costs against the Council of the London Borough of Waltham Forest.
 - The appeal was against the refusal of planning permission for an extension at roof level to an existing single-storey warehouse and conversion to a mixed-use live/work unit.
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Decision

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

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 PPG outlines that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicant considers that the Council has behaved unreasonably in refusing planning permission for the development and should have granted planning permission having regard to the development plan and other material considerations.
5. The Council refused planning permission for the proposed development for six reasons as outlined in the Decision Notice.
6. The first reason for refusal outlines that the proposed development was deemed to be unacceptable in principle through its failure to provide a clear need for a residential premises at the trading estate, which is a non-designated employment site.
7. The relevant policies are Policy 28 of the Waltham Forest Local Plan (2024) and Policy E7 of the London Plan (2021). These policies outline the approach to be taken when considering planning applications for mixed uses, including those

- comprising residential uses at non-designated employment land. Neither policy requires there to be a demonstrable need.
8. Whilst both policies require justification where there would be a loss of commercial floorspace, this would not occur in the proposed development, which would in fact result in an increase in the amount of commercial floorspace, something which the Council failed to acknowledge. The Council also failed to recognise that the proposed development complied with the elements of the policy requiring that the development provides replacement or intensified employment floorspace, with the quantum of any existing industrial, storage, or distribution floorspace being - as a minimum - fully re-provided as an industrial use.
 9. Given that the policy outlines that the scenarios where proposals such as the appeal development are supported, are separate, with each scenario followed by the word 'or' in the policy, it was unreasonable for the Council to refuse the proposed development for being contrary to these policies, when it clearly met one of the given exceptions. This amounts to unreasonable behaviour.
 10. I will next turn to the Council's reason for refusal concerning the submitted Outline Construction Logistics Plan, which the Council considered was not provided in an acceptable format. Policy 65 of the local plan outlines that such a document should be used to support development proposals where appropriate. In this case, the appellant submitted an Outline Construction Logistics Plan.
 11. There is no substantive reason given in the Council's evidence why the submitted Outline Construction Logistics Plan was not acceptable, or what information would be required to make it acceptable. Nor is it outlined whether or not any further details considered to be necessary could be secured by a planning condition prior to the commencement of development. The Council have failed to substantiate this reason for refusal and this amounts to unreasonable behaviour.
 12. Having regard to the other reasons for refusal, these are in relation to the effect of the proposed development on the character and appearance of the area; the management of refuse, recycling and food waste; the environment for future residents; and the failure to enter into a legal agreement to secure, amongst other things, contributions towards ecological mitigation and the promotion of sustainable travel options.
 13. In relation to the effect of the development on the character and appearance of the area and the resulting environment created for future residents, although it can be seen from my decision that I disagree with the Council's findings on these matters, I find that the Council did not act unreasonably in refusing planning permission on this basis. The Council provided a reasonable and objective analysis to substantiate its reasons for refusal on these issues in this regard and exercised its planning judgment.
 14. In terms of the provision of facilities for refuse, recycling and food waste, the Council referred to the elements of policies which they considered the proposal did not comply with and this included their own guidance. Whilst I have found that they did not give due weight to the existing situation, this does not amount to unreasonable behaviour.
 15. In terms of the failure to enter into a legal agreement, this followed, particularly in relation to the Special Area of Conservation, a reasonable analysis of the

requirement for a financial contribution to mitigate the impacts of the development. In refusing planning permission for this reason, the Council based their decision on the evidence before them, something I have done in this appeal. I have also found that the failure to provide a completed legal agreement to be a reason to dismiss the appeal. It was therefore not unreasonable to refuse planning permission for this reason.

16. The applicant has referred to the conduct of the Council in not collaborating in the production of a legal agreement. There is no substantive evidence of the events that did or did not occur that would lead me to conclude that the Council acted unreasonably on this matter. Either way, there is not a completed agreement before me, despite the applicant's willingness to enter into such an agreement.

Conclusion

17. The Council refused planning permission for six reasons, as set out in its Decision Notice. For the reasons given above, I have found that the Council behaved unreasonably in refusing planning permission for reasons nos. 1 and 5, but not the others.
18. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of these reasons and a partial award of costs is therefore warranted.

Costs Order

19. 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 Waltham Forest shall pay to Mr Marc Rowan the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's reasons for refusal nos. 1 and 5; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to the Council of the London Borough of Waltham Forest to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A M Nilsson

INSPECTOR