



Costs Decision

Hearing opened on 18 March 2025

Site visit made on 19 March 2025

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th May 2025

Costs application in relation to Appeal Ref: APP/H5390/W/24/3356413

St Stephen's Hall, 3-5 Gayford Road, London W12 9BY

- 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 Northcote Western Limited for a full award of costs against the Council of the London Borough of Hammersmith and Fulham.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for: Demolition of existing building and construction of part-three, part-four storey development (with additional lower ground floor development) comprising nursery use (Class E) at lower ground and ground floors and residential dwellings at first floor and above.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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. Notwithstanding their written application for costs, the applicant clarified at the hearing that they consider the Council has exhibited unreasonable behaviour that is substantive in nature, rather than procedural.
4. The applicant argues the Council did not raise concerns about land use principle in pre-application discussions or until two years after the planning application was submitted, when it sought further benefits; and did not advance its case about insufficient justification for the loss of the community hall until after the appeal was lodged. The applicant further contends the Council has misconstrued its development plan policies and sought a planning obligation for subsidised nursery places for which there is no policy basis.
5. In my appeal decision, I found no conflict with Policy CF2 of the Hammersmith & Fulham Local Plan (HFLP) because the service provided by the community hall could be provided elsewhere in the locality and the proposed nursery would deliver an alternative economically viable community use on the site. The Council reached a different view in its appeal statement based in part on the absence of a viability report. HFLP Policy CF2 seeks a viability report that demonstrates “the facility or an alternative community use” is not economically viable. However, in this case an alternative economically viable community use was proposed, so a further viability

report was not necessary. I therefore find the Council has based its objection to the proposal in part on a misconstruction of this Policy.

6. Moreover, this position contradicts that taken by the Council in its pre-application letter to the applicant on 21 January 2022. Paragraphs 3.3 and 3.4 of that letter note the proposed nursery would continue to provide community facilities, accepts evidence of need for such provision and that the existing community use was not economically viable, and confirms compliance with HFLP Policies CF1 and CF2. Given the unequivocal expression of these views, it was reasonable for the applicant to take some comfort from this about the land use principle of their proposal, notwithstanding the 'without prejudice' disclaimer and advice elsewhere in the letter that Children's Services may have additional comments and should be advised of the proposal.
7. There is no pertinent evidence the Council's land use concerns were raised with the applicant before June 2024, or that the rationale for its changed position was explained when they were. There is no consultation response from Children's Services before me and the Council could not clarify at the hearing when that service first expressed concerns about the proposal. The emails before me make no reference to insufficient evidence of need or viability and seek additional benefits without explanation. Even after the appeal was made, little was provided by the Council to substantiate the policy basis, need, type, quantum or value of subsidy sought. In my appeal decision, this led me to find bursary places in perpetuity would not satisfy the statutory tests for planning obligations¹.
8. In these circumstances, it was reasonable for the appellant to appeal non-determination, however hard the Council tried to maintain open lines of communication. Moreover, I do not accept the argument that the appeal would have been necessary anyway because the Council had other grounds for rejecting the scheme. These other grounds relate to highways matters and balcony size, all of which are capable of being addressed through conditions or planning obligations, for the reasons I have set out in my appeal decision. The alleged conflict with London Plan Policy D7 in relation to the accessibility of the proposed dwellings also fails to take appropriate account of the flexibility allowed for in that Policy, for the reasons I have given in that decision.
9. I therefore find the Council has acted unreasonably by delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. This unreasonable behaviour has directly caused the applicant to incur unnecessary or wasted expense in the appeal process, including professional, technical and legal advice to submit the appeal and represent the applicant at the hearing.
10. 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

11. 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 and Fulham shall pay to Northcote Western

¹ In Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended)

Limited 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.

12. The applicant is now invited to submit to the Council of the London Borough of Hammersmith and 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.

C Carpenter

INSPECTOR