



Costs Decision

Site visit made on 26 October 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

Costs application in relation to Appeal Ref: APP/M5450/W/22/3292680 Marlborough House, 159 High Street, Harrow, London HA3 5DX

- 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 W.E Black Ltd for a full award of costs against the London Borough of Harrow.
 - The appeal was against the refusal of planning permission for demolition of existing buildings and construction of a four to six storey building containing 33 flats.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG sets out the examples of unreasonable behaviour by local planning authorities which includes delay in providing information or other failure to adhere to deadlines¹; preventing or delaying development which should have clearly been permitted, having regard to its accordance with the development plan, national policy and other considerations and making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis².
4. The appellant's case sets out that the Council have gone beyond their legal authority in consideration of the appeal by treating the proposals as a planning application rather than an application for prior approval.
5. Paragraph B(15) of Part 20, Class ZA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) requires a local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework so far as relevant to the subject matter of the prior approval, as if the application were a planning application. There is no provision for a local planning authority to take into account the development plan.
6. Based on the evidence before me, and despite the Council's contention, it is apparent to me that the proposals have been considered against the policies in

¹ Paragraph: 047 Reference ID: 16-047-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

the development plan and against the duty set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004.

7. As set out in my decision letter, the PPG makes clear that the statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications and is a light-touch process. In the context of the prior approval legislation the Council has erred in their assessment by considering the application against the development plan. In light of this I find that the Council have acted unreasonably.
8. I acknowledge that the Council has exercised their planning judgement in relation to flood risk, which the applicant addressed through the submission of a Flood Risk Assessment. However, in respect of the second reason for refusal the Council's case fell a long way short of substantiating its claim that the absence of defensible space would harm the living conditions of future occupiers. The refusal of planning permission on these grounds, in the absence of any justifiable evidence about the proposal's impact amounted to unreasonable behaviour and resulted in the applicant incurring unnecessary expense in making this appeal.
9. Now turning to the third reason for refusal, whilst the local planning authority had the right to evaluate the landscaping details and take into account any representations received, the requirements for a more detailed landscape design including biodiversity enhancements is an unnecessarily onerous requirement in the context of the prior approval legislation. In addition, there is no provision in the GPDO to consider the visual setting of the building in the context of landscaping. The applicant has expended resources in countering the Council's position in respect of this reason for refusal.
10. In this appeal, there was a delay in the Council dispatching the appeal questionnaire and the Council only submitted the development plan policies and a plan (on which the Council made its decision) at my request long after the deadline for this. Furthermore, the Council's cost rebuttal references reasons for refusal that relate to a previous application on the site and not the reasons for refusal relevant to the appeal proposals. I gather that there are some extenuating circumstances in relation to a change in staff and I.T, but it is the Council's responsibility to have systems in place whereby it can reasonably respond to its appeal obligations.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

12. 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 London Borough of Harrow shall pay to W.E Black Ltd, 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.
13. The applicant is now invited to submit to the London Borough of Harrow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B Thandi

INSPECTOR