The Planning Inspectorate

Costs Decision

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Costs application in relation to Appeal Ref: APP/F5540/X/24/3345413 Station Parade, Boston Manor Road, Hounslow, Brentford, TW8 8DZ

- 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 Kieran Redmond of Station Parade House Limited for a full award of costs against the Council of the London Borough of Hounslow.
- The appeal was against the refusal of a certificate of lawful use or development (LDC) for "commencement of works is in accordance with planning permission 00133/AY/P3 and its conditions".

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 (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 is seeking a full award of costs because the Council, in refusing the application, failed to apply the settled legal principles (*Whitley & Sons v SSW* [1992] 64 P&CR 296 9) to the application. The appellant claims they have been put to the expense of an unnecessary appeal. In addition, when the appellant offered to settle the appeal in pragmatic terms, the Council failed to respond.

4. The PPG advises that a local planning authority is 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 or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include acting contrary to, or not following, well-established case law or not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.

5. The LDC application sought confirmation that planning permission ref: 00133/AY/P3 had been implemented in accordance with its conditions within the statutory period, and the works were thus lawful.

6. In making its assessment, the Council focussed on the works which had taken place after the withdrawal of a Temporary Stop Notice (TSN), which it considered were after the expiry of the planning permission. However, it failed to acknowledge that works had taken place before that date. It is clear from the terms of the TSN that the works carried out were in relation to the planning permission and the Council appears to accept that the works were a material operation.

7. There is no explanation of why this evidence was ignored. The Council failed to have regard to Section 56(2) of the 1990 Act, which provides that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.

8. Moreover, the Council failed to apply caselaw in a consistent manner. It was clearly aware of the principles established in *Whitley* since it applied one of the 'exceptions' when it considered whether condition 13 had been discharged prior to the works starting on site. The Council concluded that the failure to secure agreement to part of condition 13 would not have been fatal to the application. However, it did not apply the same principles to the other conditions which were worded as pre-commencement conditions.

9. The Council continued to maintain its position and the works prior to the TSN were disregarded, despite having received a letter from the appellant's legal advisor which offered to settle the appeal. The Council could have reviewed the case at that stage and taken its own legal advice if necessary. The failure to respond to the letter was unreasonable.

10. The appeal could have been avoided had the Council applied caselaw consistently or reviewed its position on receiving the legal submissions.

11. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

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 Council of the London Borough of Hounslow shall pay to Mr Kieran Redmond of Station Parade House 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.

13. The applicant is now invited to submit to the Council of the London Borough of Hounslow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Moore

Inspector