The Planning Inspectorate

Costs Decision

Site visit made on 12 October 2016

by Beverley Doward BSc BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 December 2016

Costs application in relation to Appeal Ref: APP/G5180/W/16/3152631
65-67 Cameron Road, South Bromley, BR2 9BG

- 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 M Ali for a full award of costs against the Council of the London Borough of Bromley.
- The appeal was against the refusal of planning permission for a new day nursery and early learning centre.

Decision

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

Reasons

2. 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 application is made on the basis that the Council behaved unreasonably with respect to the substance of the matter and that its reasons for refusal were unjustified having particular regard to the findings of the Inspector in an appeal on a previous proposal for a similar scheme on the site. It is also contended that the Council behaved unreasonably in procedural terms by not undertaking a proper assessment of the proposal against the relevant development plan policy and the principles of sustainable development set out in the National Planning Policy Framework.

4. The Council's Planning Sub-Committee refused the application contrary to the recommendation of its Officers who had produced a report stating that it was considered that on balance and having regard to the findings of the Inspector on the previous appeal the proposed D1 use of the site was acceptable, the scale, siting and size of the development now proposed would not unduly impair the open nature of the site, the intended hours of use were acceptable, the use would not result in a harmful impact on the amenities of local residents or have an unacceptable impact on road safety and the surrounding highway network.

5. Authorities are not bound to accept the recommendations of their Officers, but if their professional or technical advice is not followed, then reasonable planning grounds for taking a contrary decision need to be provided and supported by relevant evidence.

6. In relation to the first reason for refusal the effect of a proposal on the character and appearance of an area is largely a subjective assessment which often comes down to a finely balanced planning judgement. However, in this case, given the similar design approach of the appeal proposal to the scheme considered by the Inspector in the previous appeal, the Council had an objective reference point for its assessment of the proposal in the previous appeal decision.

7. The PPG indicates 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 in persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable. The Inspector's concerns set out in the previous decision in relation to its effect on the character and appearance of the area were narrow and related to specific elements of the design. However, despite acknowledging that the design of the proposal had been amended to remove some elements which the previous Inspector had raised concerns about and to replace others, the Council continued to contend that the development would, by reason of its design, unduly impair the open nature of the site. The only specific aspect of the proposal referred to in the reason for refusal related to the proposed fencing. However, the Council's concerns in relation to this could have been addressed by the imposition of a suitably worded condition requiring the details to be submitted and approved before any development took place. The PPG indicates that where a local planning authority refuses planning permission on a planning ground capable of being dealt with by conditions it risks an award of costs where it is concluded that suitable conditions would enable the proposed development to go ahead. That is the case here.

8. In relation to the second reason for refusal the Council's appeal statement referred mainly to the visual impact of the proposal and contended that the proposal would substantially impair the residential amenity of residents in terms of the loss of open space and outlook. However, these matters did not form any part of the reason for refusal which referred only to the effect of the proposal on the living conditions of neighbours by reason of the additional noise and disturbance associated with activities relating to the proposed use as a day nursery. Therefore, although to some extent these issues fall to be considered under the first reason for refusal it was unreasonable of the Council to introduce them within its appeal statement in relation to the second reason for refusal.

9. No substantive technical evidence was submitted to support the Council's contention that the appeal proposal would result in a considerable increase in the ambient noise levels as a result of the level of activity associated with the proposed use, the Council's Environmental Health Officer indicating that they did not object to the proposal in relation to this matter subject to the imposition of a suitably worded condition restricting the maximum number of children attending the facility at any one time to that indicated in the documentation. Furthermore, this reason was not included as a reason for refusal on the previous proposal for a day nursery on the site which was similar to this one in that it would have accommodated the same number of children and staff and therefore generated the same level of activity.

10. The PPG indicates that a local planning authority is at risk of an award of costs if it does not determine similar cases in a consistent manner. In the light of

the similarity of the current scheme to the previous proposal on the site I consider that the Council behaved unreasonably in introducing the second reason for refusal without submitting any substantive evidence to support it.

11. In relation to the third reason for refusal the access and parking arrangements for the proposed development are effectively unchanged from the scheme that was the subject of the previous appeal and which the Inspector found to be acceptable. The Council acknowledged that it had raised similar concerns in relation to the previous proposal but indicated that it remained concerned about the proposed parking layout and its effect on vehicle manoeuvrability within the site and by the junction with Cameron Road. However, no substantive technical evidence was submitted with the appeal. Furthermore, in response to the consultation on the planning application the Council's Highways Officer indicated that, having regard to the previous appeal decision, suitably worded conditions could be imposed to address these matters. Accordingly, having regard to the above and noting that the Inspector in the previous appeal considered that the reason for refusal on highway grounds on that proposal was not substantially argued such that an award of costs was justified in relation to that matter, I consider that, having regard to the advice in the PPG, the Council behaved unreasonably by persisting in objecting to the scheme in relation to these issues.

12. Having regard to all of the above therefore, with respect to the substance of the matter under appeal, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified. In the light of this conclusion I do not need to consider the contention that the Council acted unreasonably in other ways with respect to the procedural matters.

Costs Order

13. 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 Bromley shall pay to Mr M Ali, the costs of the appeal proceedings described in the heading of this decision.

14. The applicant is now invited to submit to the Council of the London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Beverley Doward

INSPECTOR