

Costs Decision

Hearing held on 26 October 2016

Site visit made on 27 October 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 27 January 2017

Costs application in relation to Appeal Ref: APP/X5210/W/16/3153454 Mansfield Bowling Club, Croftdown Road, London NW5 1EP.

- 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 Generator Group LLP for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against the refusal of planning permission for the creation of a new publicly accessible open space; enhanced tennis facilities including the reconfiguration and extension of the courts to provide an additional court and increased playing area to accord with LTA requirements; the provision of a new ancillary pavilion (Class D2) to replace existing ancillary buildings and structures providing community and leisure space; a new community garden; and the demolition and replacement of the existing bowling club building with a new part three storey, part 2 storey building providing 21 residential dwellings (Class C3) with associated access, parking and landscaping.
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Decision

1. The application for an award of costs made by Generator Group LLP against the Council of the London Borough of Camden is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeals process and that the application needs to clearly demonstrate that this is the case. Unreasonable behaviour may be procedural and/or substantive.
 3. The applicant is seeking a full award of costs on the basis of the Council unreasonably refusing the application for planning permission.
 4. The application was made in writing and the Council responded in writing prior to the hearing. Both main parties made additional comments orally at the hearing.
 5. The Council's first reason for refusal made reference to Policy DP15 of the Local Development Framework Development Policies. However in this reason for refusal the Council failed to distinguish between the two parts of the policy which have relevance to the proposed development and which are alternative criteria to be satisfied. The reason for refusal made no reference to the test set out within Policy DP15 e) which allows the loss of leisure facilities if
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adequate alternative facilities are available in the area and therefore no shortfall would be created by the loss.

6. Within the officer report to the Development Control Committee it was noted that the Council's independently appointed consultants KKP found that the evidence presented by the appellant's consultants satisfied the criteria in Policy DP15 and the National Planning Policy Framework. Additionally, the officer report confirmed that adequate alternative bowls facilities were available and that there would be no shortfall in indoor and outdoor bowls. The Council also confirmed at the hearing that the bowling use was no longer required. On this basis I found criterion e) was met.
7. The wording within the first reason for refusal is almost identical to criterion f) and fails to demonstrate a lack of compliance with the policy. Irrespective of my finding in relation to compliance with Policy DP15 e) it was unreasonable for the Council's first reason for refusal not to address criterion e). Even if the Council had been right that criterion f) had not been satisfied, the requirement, which the Council accepted, was that either e) or f) needed to be met and the failure to address criterion e) within the first reason for refusal was unreasonable. On this basis the applicant was required to address criterion f) through the appeal process which led to them incurring unnecessary and wasted expense as a result.
8. It has been demonstrated that there was unreasonable behaviour resulting in unnecessary expense as described in PPG by the Council. As a result a full award of costs on this matter is justified.

Costs Order

9. 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 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Camden shall pay to Generator Group LLP 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.
10. The applicant is now invited to submit to the Council of the London Borough of Camden, to whom a copy of this decision has been sent, details of those costs with a view to reaching an 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 Cost Office is enclosed.

Kevin Gleeson

INSPECTOR