
Costs Decision

Site visit made on 23 January 2018

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 07 February 2018

Costs application in relation to Appeal Ref: APP/W3710/W/17/3181271 Bulkington War Memorial Club, Stafford Close, Bulkington, Bedworth CV12 9QX

- 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 Max West (RHD Direct Ltd) for a full award of costs against Nuneaton & Bedworth Borough Council.
 - The appeal was against the refusal of planning permission for a children's play area, including fixed static equipment.
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Decision

1. The application for an award of costs is refused.

The Parties' Cases

2. The application for costs, the Council's response, and the applicant's final comments were all submitted in writing and the contents of those submissions will be familiar to the parties involved. Therefore, the following is a brief summary of the main grounds of the application and the Council's response.

The Application

3. The application for a full award of costs was made on three main grounds with reference to guidance on costs contained within the Planning Practice Guidance (PPG). The first was that the Council failed to produce evidence to substantiate its reason for refusal; the second that the refusal was on a ground capable of being dealt with by condition; and the third that the Council has failed to determine similar cases in a like manner.

The Council's Response

4. The Council maintains that it acted reasonably in refusing the application on the basis that a complaint had been received from a neighbouring resident and, on the basis of that complaint it was reasonable to consider that the impact was adverse. The Council also maintains that the installation of play equipment intensifies the use of the area over and above the use for sitting out in conjunction with the club. The assessment of noise was not straightforward in the absence of any specific guidelines for that type of noise.
5. Conditions were considered by the Council but were considered to be impractical or difficult to enforce.

Reasons

6. The PPG advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 049 identifies that a local planning authority may be at risk of an award of costs if it fails to produce evidence to substantiate a reason for refusal, fails to determine cases in a consistent manner, or refuses to grant planning permission on a matter capable of being dealt with by condition.
7. As set out in my associated decision, no noise measurements appear to have been taken by either side in order to assess the impact of the play equipment when in use. Within its reason for refusal the Council alleges that the appellant has failed to demonstrate that the impact would not be detrimental. The appellant maintains that it is for the Council to demonstrate that significant adverse effects have occurred. In other words, each attempts to place the onus for assessing the actual impact on the other party. That was an impasse that was not particularly helpful in attempting to understand the impact of the scheme.
8. In the circumstances of the case, it was not unreasonable for the Council to have concerns relating to noise given the proximity of the play area close to residential properties. Whilst the onus is on the Council to substantiate its reason for refusal there was no specific obligation to undertake on site noise measurements. It is for an applicant to submit information at the planning application stage in support of his/ her case and, in view of the Council's concerns, it was open to the applicant to undertake an on-site noise survey. Thus, the absence of on-site noise readings is not a failing that can be attributed solely to the Council.
9. The Council determined the application on the basis of the information before it at the time and that was not an unreasonable course of action in my view. Moreover, the Council did substantiate its position at appeal with reference to comments from a neighbouring resident and the Environmental Health Officer. My decision on the appeal was a finely balanced judgement which took account of a number of factors, including the nature of the scheme, its location, the comments from neighbouring residents and the likely way in which the play area will be used. I reached a different conclusion to the Council but that does not dictate that it was unreasonable to refuse the application on the basis of the information available to it at the time.
10. The officer report relating to the application does show that conditions were considered by the Council albeit that the idea of a temporary consent did not appear to be an idea that was mooted at the time. That may be because the applicant had not indicated that such a condition would be acceptable to him at that stage. The PPG notes that it is open to both parties to initiate discussions around potential conditions and encourages such discussion at an early stage in the process¹. More fundamentally, in view of the Council's concerns about the harmful impact of the play area it was under no obligation to grant planning permission, even for a temporary period. As noted above, I find the Council's concerns were not unreasonably held, even though I reached a different conclusion.

¹ Paragraph: 019 Reference ID: 21a-019-20140306

11. Finally, the Council failed to respond to comments in the appellant's appeal statement regarding the grant of planning permission for a play area elsewhere in the district. Whilst it may have been helpful to set out why it considered that the two schemes were not comparable the Council's failure to do so did not strike at the heart of the issue before the appeal which was the specific impact of the play area in question.
12. Moreover, given that I have concluded that the Council's reason for refusal was not unreasonable, based on the information before it, the expense in submitting the subsequent appeal was not unnecessarily incurred. Reference to another decision within the applicant's statement would not have added greatly to the cost submitting the appeal and that point alone does not justify an award of costs based on wasted expense.
13. For all of the above reasons I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Chris Preston

INSPECTOR