
Costs Decision

Site visit made on 6 June 2019

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2019

Costs application in relation to Appeal Ref: APP/N1920/W/19/3222718 190 Potters Bar Clinic, Barnet Road, Potters Bar EN6 2SE

- 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 Elysium Healthcare Ltd for a full award of costs against Hertsmere Borough Council.
 - The appeal was against the refusal of planning permission for the reconfiguration of existing car park to provide additional 23 spaces, vehicle barriers and footpaths, removal of trees and additional planting of trees.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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. Examples of unreasonable behaviour of the local planning authority include not determining similar cases in a consistent manner and where the Council has prevented development which should have been permitted.
3. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations or fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The main thrust of the Applicant's case is that the Council has failed to have regard to expert technical evidence and failed to substantiate the reason for refusal at appeal.
5. The Applicant considers that this behaviour has led them to incur unnecessary delay and expense in having to appeal the refusal when planning permission should have been granted.
6. The Council, in their Officer's report and comments from the Tree Officer, have clearly had regard to the reports submitted by the Appellant and have provided detailed comments and reasoning to support the reason for refusal, based on the value of the trees to the character and appearance of the area.

7. In reaching my decision, it was clear that the merits of the proposal rested on a subjective opinion as to whether or not the proposed development, on balance, would harm the character and appearance of the surrounding area as a result of the loss of the trees, taking account of the proposed replacement trees and the benefit of formalising the current informal parking arrangements on the site.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and therefore an award of costs is not justified.

Mark Brooker

INSPECTOR