



Costs Decisions

Hearing Held on 3 July 2019

Site visit made on 3 July 2019

by Andrew R Hammond MA MSc CEng MRTPI

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

Decision date: 31 July 2019

Costs application in relation to Appeal Ref: APP/Y3615/C/18/3200526 Land at the Surrey County Hospital, Egerton Road, Guildford GU2 7YX

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Royal Surrey County Hospital NHS Foundation Trust for a full award of costs against Guildford Borough Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging failure to comply with Condition 1 of Planning Permission 15/P/00976.
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This costs decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the costs decision issued on 12 July 2019.

Decision

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

The submissions for Royal Surrey County Hospital NHS Foundation Trust

2. The submissions were made in writing and assert that the Council acted unreasonably in serving the enforcement notice two days after refusing planning permission without consultation and without evidence that the use of the car park caused any real impact on road safety or congestion.
3. No consideration was given to the effect of closure on the efficient operation of the hospital or to clinical care or patient welfare.
4. Whilst the hospital had provided cogent professional evidence that the use of the car park has no adverse effect the Council only produced evidence suggesting the contrary retrospectively. No request for further information was made prior to the refusal of planning permission and the, almost contemporaneous, issue of the enforcement notice.
5. A significant part of the Council's case is that breaches of condition relating to the operation of the car park led to severe impact on the highway network, yet the Council at no time took action in relation to the alleged breaches. In fact, a total of three investigations into breaches were all closed as no breach was identified.

The response by Guildford Borough Council

6. The Council's response, also in writing was that the hospital had had over 10 years to find a long term solution knowing that traffic impacts were an issue from the outset.
7. It is noteworthy that there is no ground (g) appeal despite the Council being reasonable and suggesting that it would be prepared to extend the period for compliance were an acceptable scheme were in the delivery process.
8. There is no effect on the operational efficiency of the hospital, staff may merely be inconvenienced in having to park elsewhere or adopt a different mode of transport and may, as a result, be late for work.
9. It is not unreasonable to issue an enforcement notice in the light of the Highway Authority's position. The Authority did not object subject to conditions restricting the use at peak times. Those conditions have been shown not to work and are unenforceable and it cannot be concluded that there will be no trips generated in the peak hours.
10. The Council has acted reasonably in suggesting alternative conditions which might work better.

Reasons

11. The Planning Practice Guidance 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.
12. The enforcement notice alleges breach of condition 1 (discontinuance of use) and yet cites a failure to demonstrate that the development would not have a severe impact as reasons for issuing the notice, despite the reason for imposition of condition 1 being to allow the local planning authority an opportunity to assess the effect on the proposal on the local highway and strategic network. No attempt was made to assess the effect until after the refusal of the 2017 application and issue of the enforcement notice and the Officer's Report recommending enforcement action was written the day after refusal of planning permission. The Report makes no reference to any evidence as to the effect on the highway network but merely cites a failure by the hospital to demonstrate that there is not!
13. The hospital had provided substantial evidence at the time of the application as to the highway effects of the use of Plot 23 for parking but the Council had failed to question this evidence or seek further information at the time. No critique of the hospital's transport reports was made until after the issue of the notice.
14. The Council failed to take account of the effect of taking enforcement action, and hence expediency. The suggestion that ceasing use of the car park would merely result in inconvenience and the potential for staff being late for work failed to take account of the nature of that work and the consequential effect on the health of the community.
15. The Council only offered the suggestion as to alternative conditions, such as the use of an APNR barrier at the Hearing. That is not a demonstration of reasonable behaviour.

16. I find that the Council had acted unreasonably in issuing the enforcement notice without having properly assessed the evidence before it at the time, the actual effect on the highway network or the impact on the health of the community and thereafter failing to enter dialogue as to potential resolution. As a result, the applicant incurred unnecessary expense in pursuing the appeal and a full award of costs is justified.

Costs Order

17. 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 Guildford Borough Council shall pay to the Royal Surrey County Hospital NHS Foundation Trust, 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.
18. The applicant is now invited to submit to Guildford Borough Council details of those costs with a view to reaching agreement as to the amount.

Andrew Hammond

Inspector