



Costs Decision

Site visit made on 20 August 2019

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2019

Costs application in relation to Appeal Ref: APP/W0340/W/19/3230958 Herongate Leisure Centre, Charnham Park, Hungerford, Berkshire RG17 0YU

- 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 Kerridge Properties Ltd for a full award of costs against West Berkshire District Council.
 - The appeal was against the refusal of planning permission for the change of use of former children's creche (Class D1) to 4 serviced apartments (Class C1).
-

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. An award of costs has been sought on the grounds that the Council incorrectly deemed the proposed use to fall within Use Class C3 and not Use Class C1. Whilst the Council have identified that there can be a crossover between those uses and that disputes may require a judgement based on matters of fact and degree, the application was clearly proposing a use falling within Use Class C1. Both reasons for refusal were advanced on the basis that the proposal was for the residential use of a building, but this was not the basis of the application and no assessment appears to have been made of the potential use of conditions to address this matter. In this instance I find that the Council acted unreasonably by considering a proposal that is different to that which was applied for.
4. The award of costs is also sought on the grounds that the Council has not had adequate regard to their own conclusion in respect of another similar application within the District, despite it being brought to the Council's attention. The Council have suggested that the other example is not comparable as the circumstances of the site are materially different, citing the location of the other development and the content of the development plan as reasons for the use to be considered differently. I do not agree that the location of the use or the content of the development plan is relevant to the classification of the use and therefore the reasons for discounting the similarity between cases appears to be flawed. The PPG identifies that not determining similar cases consistently is an example of unreasonable behaviour and in this instance, the reasoning given for reaching a different conclusion is inadequate.
5. The applicant also argues that a crucial part of Policy CS9 of the West Berkshire Core Strategy (2006-2026) was disregarded, leading to an incorrect conclusion

being reached. The Council has stated that the application was determined in accordance with the development plan, as required by legislation, but the evidence before me indicates that no regard was had to the aspect of policy CS9 that allows for complementary uses to be located within the Protected Employment Area. No assessment appears to have been made as to whether the proposal accorded with this aspect of the policy at the time that the application was determined. A stance appears to have been taken that only employment uses are acceptable. I therefore do not agree that full regard was had to the content of the development plan and I find this to be a further example of unreasonable behaviour.

6. The applicant also suggests that the Council failed to have full regard to the use of the site and the separation of the site from the adjacent land uses that fall within Use Class B1. However, in this respect the Officer's Report shows that regard was had to the location and the surrounding uses and whilst I do not agree with the conclusion of the Council, I do not find that the behaviour of the Council was unreasonable in this respect.
7. A commentary from both parties has been provided in relation to the exchange of correspondence that occurred immediately prior to the refusal of the application. Although the National Planning Policy Framework and the PPG encourage proactive relationships between parties, there is no requirement for the Council to liaise with an applicant prior to the determination of an application. However, the evidence before me indicates that the Council did communicate with the applicant and although this gave the applicant short notice, I find that the Council has not shown a lack of co-operation. I therefore do not find that unreasonable behaviour has occurred in this regard.
8. In conclusion, by reaching its decision on the basis of a proposal that is different to that which was applied for, not having full regard to the content of the development plan and not acting consistently without good reason, I consider that the Council has acted unreasonably. Both reasons for refusal stemmed from the Council effectively considering an alternative proposal and therefore all costs associated with the appeal arose as a result of this unreasonable behaviour. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described by the PPG, has been demonstrated and that a full award of costs 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 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that West Berkshire District Council shall pay to Kerridge Properties Ltd, 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 West Berkshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Ian Harrison

INSPECTOR