
Costs Decision

Site visit made on 8 October 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th November 2019

Costs application in relation to Appeal Ref: APP/N1920/W/19/3233387 51 Bushey Hall Road, Bushey, WD23 2EE

- 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 Yovita Ltd for a full award of costs against Hertsmere Borough Council.
 - The appeal was against the refusal of planning permission for development described as 'the extensions (the property) shall be used as accommodation as a care home to care for people in need of care and for no other purpose within Use Class C2, residential institutions, of the Town and Country (Use Classes) Order 1987 (as amended)' without complying with a condition attached to planning permission Ref TP/12/0627, dated 18 May 2012.
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Decision

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

Procedural Matter

2. The applicant has not stipulated whether a full or partial award of costs is sought but the evidence before me leads me to conclude that a full award of costs is sought, and I have made my decision on that basis.

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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.
4. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. The applicant submits that the Council has acted unreasonably in that it has gone against the advice of its professional officers without good reason and failed to substantiate the objection on the grounds of harm to highway safety, and failed to justify the requirement for the retention of the condition in light of the 'six tests'¹, which sets out the circumstances upon which planning conditions should be imposed. The proposal complied with the development plan and should have been permitted and the necessary appeal caused the

¹ See National Planning Policy Framework paragraph 55 the '6 tests' of planning conditions

applicant unnecessary expense, constituting unreasonable behaviour. The Council have not responded to the application for costs.

6. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. The Council's planning officer set out that the existing planning condition failed at least two of the six tests, thus there was no basis for its removal to be refused. The main reason relates to the existing planning condition, to restrict the use of the building as a 'care home', which applied to only part of the appeal property, thus the remainder of the building could be used for any purpose in the C2 use classes order². Whilst the planning committee concluded that the planning condition appeared to be valid, little evidence was put forward that there was an existing parking problem, nor how the proposal itself, bearing in mind the lack of a similar planning condition restricting the use of the remainder of the building, would be detrimental to highway safety.
8. In my appeal decision, I found that there was no justifiable planning reason to withhold planning permission, nor was there any conflict with national or local planning policy. To my mind, the Council failed to present specific policies or a robust explanation to demonstrate how the removal of the condition would lead to traffic and on-street parking requirements which would detract from the area's character and lead to on-street parking to the detriment of highway safety.
9. As a result, I consider that the Council has acted unreasonably in withholding planning permission which should clearly have been granted and this has resulted in the unnecessary expense of lodging the appeal.

Conclusion

10. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

11. 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 Hertsmere Borough Council shall pay Yovita Ltd, the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to Hertsmere Borough 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, such costs to be assessed in the Senior Courts Costs Office if not agreed.

Matthew Woodward

INSPECTOR

² See The Town and Country Planning (Use Classes) Order 1987 (as amended)