The Planning Inspectorate

Costs Decision

Inquiry opened on 5 November 2019

Site visit made on 6 November 2019

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 30th April 2020

Costs application in relation to Appeal Ref: APP/L5810/W/18/3205616
Former Imperial College Private Ground, Udney Park Road, Teddington TW11 9BB

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the Udney Park Playing Fields Trust and The Teddington Society for a partial award of costs against Quantum Teddington Development Ltd, Quantum Teddington LLP and Teddington Community Sports Ground Community Interest Company.
- The inquiry was in connection with an appeal against the failure of the Council of the London Borough of Richmond-upon-Thames to issue a notice of their decision within the prescribed period on an application for planning permission for erection of new extra-care community, with new public open space and improved sports facilities, comprising: 107 extra-care apartments (Class C2 use), visitor suites, and associated car parking; 12 GP surgery (Class D1 use) and associated car parking; new public open space including a public park, and a community orchard; improved sports facilities (Class D2 use) comprising a 3G pitch, turf pitch, MUGA, playground, pavilion and community space, and associated parking (68 spaces); paddock for horses; and a new pedestrian crossing at Cromwell Road; and all other associated works.
- The Inquiry sat for thirteen days: 5 to 8, 12 to 15, 19 & 20 November 2019 and 9 to 11 March 2020.

Decision

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

Reasons

2. The costs application was submitted in writing following the close of the Inquiry as was the response and final comments.

3. 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.

4. The applicants' principal ground was that once the Local Green Space (LGS) designation in the London Borough of Richmond-upon-Thames Local Plan had been confirmed by the Second Examining Inspector the appellants should have reviewed their case and withdrawn the appeal on the basis that it no longer had a reasonable prospect of success. In any event, the appellants failed to take into account a proper assessment of the changed circumstances and that

they provided inadequate supporting evidence to justify development which was clearly not in accordance with the development plan.

5. The appellants' response was that even with the LGS designation in place, there still needed to be a balance between the harms and benefits. While the LGS designation changed the position, the case made by the appellants was supported by evidence. While the relevant witness agreed under cross-examination that he had given insufficient weight to the LGS designation this did not mean that the overall approach was unreasonable.

6. Clearly the designation of the LGS marked a material change in circumstances in the consideration of the appeal. However, it was clear from a response to my question at the Pre-Inquiry Meeting held in September 2019 that this was not going to change the appellants' overall approach. The only difference was that the appellants then needed to show very special circumstances, and their approach was that the benefits of the case taken together represented such very special circumstances in any event. This effectively was the way the appeal was approached prior to the LGS designation, although the balance would have changed at that point.

7. While I have disagreed with the appellants on many aspects of the appeal and the weight that they gave to the various issues, these were principally matters of planning judgement where, even looking at the same evidence, two people can reasonably come to different conclusions.

8. The one area where the appellants did not reasonably assess matters related to the weight that should have been given to harm for the proposal representing inappropriate development in an LGS. While weight, generally, is a subjective matter, the weight to be given here is clearly set out in paragraph 144 of the National Planning Policy Framework and the appellants gave no reason for departing from that approach. That was unreasonable.

9. However, if the appellants had approached this aspect of the appeal in a reasonable way it does not mean that they should have inevitably withdrawn the appeal. While this was clearly a very weighty consideration in the determination of the appeal, the appellants explained why they considered, collectively, the benefits that they were promoting represented very special circumstances. While I have disagreed with this conclusion that does not mean that this approach was unreasonable.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

R J Jackson

INSPECTOR