
Costs Decision

Site visit made on 19 January 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2021

Costs application in relation to Appeal Ref: APP/J2373/W/20/3259559 37 Hodder Avenue, Blackpool FY1 6NS

- 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 Mr Kris Johnson (Creative Living Care Limited) for a full award of costs against Blackpool Borough Council.
 - The appeal was against the grant subject to conditions of planning permission for the use of premises as a residential care home for one young person aged 11 - 17 (Use Class C2).
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Decision

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

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. The applicant contends that the Council acted unreasonably in refusing to disclose the location of the nearest other children's home (Class C2) on which they relied in reaching their decision. This they consider seriously disadvantaged them as they were unable to challenge the contents of the Officer report at Planning Committee, as they were not able to ascertain the location of the property that was being referenced as the reason for the decision.
4. They further raise concern that the location was also not disclosed to the elected members of the Planning Committee who were therefore also deprived of important information that was relevant to the decision-making process. Therefore, a decision was taken without the full facts being made available and the decision-making process was flawed as neither the applicant nor Elected Members were able to properly challenge the Officer's interpretation of planning policy due to non-disclosure of the information being relied on in making the recommendation. On the same Committee agenda there was a similar case where specific addresses were referenced.
5. The applicant also draws attention to the Council's own guidance on how it is possible to find out if a property of interest is within 400 metres of a similar use. They also consider that the information about such uses was already in the public domain. Furthermore, they consider that the Council failed to

- confirm with the applicant that a temporary consent was acceptable in the context of the use being regulated by Ofsted.
6. It is not within my remit to determine what is permissible for the Council to disclose in the context of its safeguarding obligations. It may be the case that information relating to proposals for such uses enter the public domain through the planning application publicity regime, but the scenario in this instance was that the Council were being asked to identify a specific property where children in care are likely to currently reside.
 7. The text to which the applicant refers does not contain an undertaking that an address will be divulged, only that whether the property is within a 400 metre radius of another similar use will be. This to my mind strikes a reasonable balance between the safeguarding issues involved and the interests of a prospective operator, in that they can find out prior to entering into an agreement to buy or a lease a property whether a planning policy conflict will arise.
 8. The Council's reasons for Condition 1 centred on the conflict with Saved Policy BH24 of the Blackpool Local Plan 2016. The applicant's contention is that the walking distance between the two properties should have been used and not a radius (as the crow flies) approach. As I have set out in my decision on the appeal, I find the approach that the Council took to measuring the distance between the appeal property and the other property in question to be the most appropriate. The applicant did not need to know the exact address to put forward their counter argument to the Council and to the Planning Committee that it should instead be based on walking distance.
 9. Indeed, it appears from the Committee minutes that have been provided that the applicant was able to present their counter argument at the Committee meeting. That the Council did not accept this argument makes it irrelevant as to whether they disclosed the address or not, as there is no dispute between the parties that the radius approach places the property within 400m. Even if the Council had disclosed the property address, the outcome would not have been different, and the appeal would not have been avoided. Therefore, the Council did not act unreasonably in refusing to divulge the address in the circumstances of this case and there has been no wasted expense occurred by the applicant in the appeal process.
 10. The Council advises that they wrote to the applicant's agent prior to the Committee meeting to set out that a temporary permission would be recommended. This has not been disputed by the applicant. Furthermore, from the Committee minutes it is not clear as to whether the applicant took the opportunity to advise the Committee of the implications relating to Ofsted, but this does not alter the fact that the Council's decision was made for planning reasons which they clearly set out and justified. With respect to the other similar case on the same Committee agenda, the Council explains that the address in question was not divulged by Council Officers, and therefore they did not take an inconsistent approach. Therefore, unreasonable behaviour did not arise in these respects either.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and the application for costs fails.

Graham Wright

INSPECTOR