



Costs Decision

Hearing held on 9, 10 and 21 December 2020

Site visit made on 11 December 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th February 2021

Costs application in relation to Appeal Ref: APP/G5180/W/20/3249202 Land at the former Hayes Bowls Club, West Common Road, Hayes, Bromley BR2 7BY

- 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 Michael Hirsch of Carebase Limited for a partial award of costs against the Council of the London Borough of Bromley.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of the existing bowls pavilion to D1 (non- residential institution use), and erection of a 3 storey building plus basement to provide a 60 bed care home (Use Class C2), with associated outdoor and indoor amenities, parking spaces and landscaping.
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Decision

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

The submissions for Michael Hirsch of Carebase Limited

2. The application for a partial award of costs was made in respect of the Council's highway objection, which is the subject of the fourth reason for refusal in the Council's decision letter. The applicant's submissions were set out in writing prior to the final day of the hearing.

The response by the Council of the London Borough of Bromley

3. Having considered the applicant's written submission, the Council responded by saying that it sought to articulate its case in the hearing statement under the relevant highway heading. Furthermore, it was clarified during the hearing that a genuine error had occurred by the inclusion of the photograph referred to by the applicant in the Council's hearing statement.

Reasons

4. Paragraph 030 of the Planning Practice Guidance on Appeals (the 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. Paragraph 049 of the PPG sets out circumstances where the behaviour of a local planning authority may give rise to a substantive award against them. These include:
 - failure to produce evidence to substantiate each reason for refusal on appeal.

- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The Council's fourth reason for refusal specifically refers to the site access and parking. The officer's report refers to these matters, but also criticises the trip generation assessment undertaken by the applicant at the planning application stage. In response to the refusal of the application the highway specialist representing the applicant provided a detailed written statement which addressed such matters as trip generation, the site access and parking.
 6. With regard to the matter of the site access, despite the Council's written evidence referring to such matters as the driveway width and lack of pedestrian footway on the driveway, at the hearing it was confirmed that the Council's concerns were not in respect of the driveway itself, but instead relate to the point of access to the site with West Common Road (WCR). There was, however, little in the Council's written evidence about this particular matter. Furthermore, the Council's witness was unable to explain what it was about the access that made the development unacceptable. However, it confirmed that the Council's concerns were not fundamental to the scheme.
 7. Whilst the Council criticised the applicant's assessment of trips generated by the development, it did not provide any evidence of its own to contradict the findings of the assessment. Indeed, the Council acknowledged that the development would have a minor impact on traffic flows¹. Despite this, in its hearing statement the Council raised concerns in respect of the effect of traffic generated by the development on the operation of the local highway network, having regard to existing pressures and the nature and scale of the proposed development. To support its case in this regard the Council only provided a description of traffic conditions on WCR at suggested times of congestion, with little other substantiating evidence. A photograph provided in the Council's statement purporting to show evidence of congestion on WRC was not, in fact, a photograph of WRC².
 8. Added to the above, the Council's case was made without any support from its own highway specialists or any professional evidence of an impact on highway safety.
 9. For the above reasons I am of the view that the Council failed to produce adequate evidence to substantiate its objection to the development with regard to the access to the site, as referred to in the fourth reason for refusal, both in terms of the access driveway and the point of access to the site from WCR. Furthermore, there was a lack of any substantiated or technical evidence from the Council to sufficiently support any claim that traffic generated by the development would adversely affect highway safety on the local highway network. The Council's evidence with regard to these matters was vague; had altered in some respects and was conflicting in others; and was in part inaccurate. Accordingly, I am of the view that unreasonable behaviour has been demonstrated on the part of the Council with regard to the parts of its case relating to access and the effect of traffic generated by the development on the safety of the local highway network.

¹ Paragraph 6.44 of the Council's hearing statement.

² Confirmed by the Council's witness during the hearing.

10. With regard to the matter of parking, a parking survey of on-street parking in the vicinity of the appeal site was submitted with the planning application. The applicant's highway specialist also provided in his hearing statement details of how the amount of parking provision to serve the development was calculated, as well as an assessment of car park usage at comparable care homes operated by the applicant. Despite reference to parking in the fourth reason for refusal and criticism of the parking survey in both the officer's report and hearing statement, at the hearing the Council confirmed that it had no objection with regard to the proposed parking provision on the site. The refusal of the application on the basis of an inadequate on-street parking survey, when there was no objection to the proposed on-site parking provision, to my mind demonstrates unreasonable behaviour in this case.
11. Furthermore, unreasonable behaviour was also demonstrated by the Council in its reliance in the fourth reason for refusal on Policy 30 (Parking) of the London Borough of Bromley Local Plan January 2019. The policy does not relate to the type of development proposed in this case and, no explanation was provided by the Council with regard to why the development would have been contrary to it.
12. I have found that unreasonable behaviour has been demonstrated in this case in respect of the matters referred to in the Council's fourth reason for refusal, which principally relates to access to the development, parking and the effect of the development on the highway network. I acknowledge that these are matters raised by interested parties and that they would have been discussed during the hearing in any event. Nevertheless, the applicant prepared written evidence and provided a highway specialist for the hearing in response to the matters referred to in the Council's fourth reason for refusal and in the relevant parts of the officer's report. The applicant has, therefore, been put to the unnecessary expense in this regard.
13. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

14. 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 the Council of the London Borough of Bromley shall pay to Michael Hirsch of Carebase Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in response to matters referred to in the Council's fourth reason for refusal of the application subject of the appeal, which include access to the development, parking and the effect of the development on the highway network; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the Council of the London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Moss

INSPECTOR