



Costs Decision

Site visit made on 9 November 2020

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 17 March 2021

Costs application in relation to Appeal Ref: APP/N1920/D/20/3255407 5 Field View Road, Potters Bar EN6 2LY

- 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 Abbey Hope-Evans for a full award of costs against Hertsmere Borough Council.
 - The appeal was against the refusal of planning permission for 'retrospective construction and use of an outbuilding for a home business ancillary to the use of the dwellinghouse'.
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Decision

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

Reasons

2. 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.
3. The application for costs is in two parts. Firstly, in relation to procedural matters, the Applicant cites a lack of cooperation on the Respondent's part to engage with the Applicant. Secondly, with regards to substantive matters, it is the Applicant's case that the Respondent was vague, generalised and inaccurate in its decision-making process. Moreover, that it failed to properly scrutinise the submission in light of similar cases and a previous appeal decision. The appellant concludes that the appeal could have been avoided had the Respondent sought to work proactively with the Applicant and examined the use of suitable conditions that would have enabled the proposal to go ahead.
4. I have had regard to the background provided by the Applicant. However, matters relating to the choice of procedure regarding previous applications and a decision by the Respondent to refuse the waiver of planning fees are not matters for me to determine as part of this application.
5. There is clear dispute between the parties as to whether the Respondent refused to engage meaningfully with the Applicant. In reaching a decision it is clear to me that the Respondent had regard to the Applicant's suggested restriction on dual occupancy of classes. This formed part of the Respondent's assessment in terms of the maximum number of visitors to the appeal property each week. Although it is not clear to me that the Respondent gave consideration to a daily restriction on the number of classes, I have given consideration to this matter myself and I have found that such a restriction would not overcome the harm I have found.

6. As part of the appeal process, further alternative operating arrangements have been put forward by the appellant. These include individual attendance at each class, reduced hours of operation on a Friday, no hours of operation on a Friday, a maximum of 5 clients per day or 15 clients per week. It is not clear on the information before me that these matters formed part of the original application. The Applicant suggests that matters '*were left deliberately open ended*'. The Respondent disagrees. Given these conflicting views and based on the evidence before me I am unable to reach a conclusive view on this matter.
7. I note that the Officer Report failed to reference the Applicants email of the 5 May 2020 and referred to third party correspondence as an objection rather than a comment. In addition, I have determined that there was no conflict with a number of policies referred to by the Respondent in their reasons for refusal. Whilst I appreciate the Applicant's frustration regarding these matters, I am not satisfied that these clearly demonstrate unreasonable behaviour nor that it led to unnecessary or wasted expense in the appeal process. I note that the Respondent actioned requests to provide copies of third party comments in a timely manner. Furthermore, given the broad similarities between the appeal scheme and the previous application¹, I do not find it unreasonable that content from the earlier Officer's report was repeated in this instance.
8. My attention has been drawn to a letter in support of the application. However, there is little evidence before me to substantiate the claim that the Respondent failed to take it into account. Moreover, the exhibit² shows a date of submission as the 29 June 2020, whereas the application was determined by the Respondent at an earlier date. Therefore, I cannot be certain when the letter of support was submitted, the nature of the complaint nor its outcome. As such, I am unable to conclude that the Respondent has failed to accurately portray local consultation responses.
9. Furthermore, I am not satisfied that the Applicant has demonstrated a failure on the Respondent's part to have regard to previous appeal decisions and deal with matters in a consistent manner. I have had regard to these matters in reaching my decision and in a similar manner, I have found those schemes not to be directly comparable to the appeal proposal.
10. Accordingly, I do not find that the Council have acted unreasonably. As such, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is therefore not justified.

E Brownless

INSPECTOR

¹ Planning Reference 19/1046/FUL

² Appendix 5 to the Applicant's Application for an award of appeal costs