
Costs Decision

Site visit made on 16 February 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th April 2021

Costs application in relation to Appeal Ref: APP/Y5420/W/20/3263650 Morris House, 23 Coolhurst Road, Hornsey, London N8 8EP

- 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 Rob and Julie Mackenzie for a full award of costs against Coolhurst 1 Ltd.
 - The appeal was against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class T, Paragraph T.2.(1)(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of care home premises (Class C2) to registered childrens nursery (Class D1).
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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 applicants contend that the appellant provided evidence which is inaccurate, inadequate and misleading. The PPG indicates that appellants will be at risk of an award of costs being made against them if they provide evidence which is manifestly inaccurate or untrue or deliberately conceal relevant evidence.
4. The PPG explains that it is not anticipated that awards of costs will be made in favour of interested parties, other than in exceptional circumstances. It states that an award will not be made in favour of interested parties where a finding of unreasonable behaviour relates to the merits of the appeal, but an award may be made on procedural grounds.
5. As set out in the costs decision for the other appeal I determined at the site¹, it is not unusual for deficiencies to be identified with evidence during planning application and appeal processes. The Council and interested parties were able to scrutinize the appellant's evidence, which led to engagement between the main parties and further submissions in attempts to overcome concerns raised.
6. It is put forward that the appellant's consultants and the proposed occupiers of the nursery have long term business relationships. However, it is not unusual

¹ Appeal reference: APP/Y5420/W/20/3263678

- for businesses to retain consultants. I have no compelling reasons to find that this has any bearing on the credibility of the submissions made.
7. The applicants contend that investigations they undertook into existing nurseries operated by the proposed occupier demonstrate that the appellant's evidence is fallacious. I have not been provided with full details of the nurseries elsewhere or issues at those sites but, in any case, I cannot be certain that one nursery will be identical to another. Moreover, several of the applicants' claims are based on conversations with nursery staff and as such are anecdotal. Firm and substantive evidence has not been provided which indicates that the appellant's evidence is manifestly inaccurate or untrue or that evidence has been deliberately concealed.
 8. Whilst I found deficiencies with the appellant's case and dismissed the appeal, the appellant's evidence is nevertheless supported by reasoned justification. In addition, notwithstanding my findings and the limitations with comparing different sites, the appellant's consultants adequately explained their approaches to drawing comparisons between the proposal and the other nurseries for the purposes of assessing impacts.
 9. I acknowledge that the applicants appointed consultants to support their case. However, the PPG clearly states that parties in planning appeals should normally meet their own expenses. I am not convinced that evidence has been deliberately concealed or that the deficiencies present in this case are so obvious, pervasive and remarkable that it can be concluded that unreasonable behaviour has occurred. Furthermore, it has not been demonstrated that exceptional circumstances exist to justify an award of costs.
 10. In conclusion, the appellant has not acted unreasonably and the applicants have not been put to unnecessary or wasted expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mark Philpott

INSPECTOR