
Costs Decision

Site visit made on 13 July 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2021

Costs application in relation to Appeal Ref: APP/B5480/W/20/3263139 1 Ambleside Avenue, Hornchurch RM12 5ES

- 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 Lifeline Projects for a partial award of costs against the Council of the London Borough of Havering.
 - The appeal was against the refusal of planning permission for the change of use from Dwelling (C3) to Nursery (D1).
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Decision

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

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's cost claim relates solely to the Council's second reason for refusal, hence why I have considered the claim on a partial basis. The grounds for the claim submit that the matter relating to the reason for refusal has already been deemed acceptable by the Council in a previous determination for a nursery on the site, and that the justification for this reason relies on outdated planning policies without reference to more recent and highly relevant development plan policies.
4. Related to the first ground for the claim, the PPG states that the types of behaviour which may give rise to a substantive award against a local planning authority includes not determining similar cases in a consistent manner.
5. The previous determination that the appellant refers to was refused solely on living conditions matters. There is no reference to the lack of a dropping off/picking up area and associated impacts on parking, traffic and highway safety, as appears in the second reason for refusal. This reason does go on to state that it would be to the detriment of surrounding neighbouring amenity, but this is of a consequence of what are essentially the highway safety matters that it raises.
6. A planning decision is one of a matter of judgment and the Council Members are entitled not to accept the professional advice of their officers so long as a

case can be made for a contrary view. It is not evident however why the second reason for refusal was applied, when it was deemed not unacceptable in the previous determination. The two proposals are of a similar nature, including with regard to staff members and numbers of children.

Circumstances can change between applications, but it has not been satisfactorily explained what is now different on this issue. The Council has therefore not determined cases in a consistent manner and this amounts to unreasonable behaviour.

7. For costs to be awarded, there also needs to have been unnecessary or wasted expense in the appeal process. The extent would have been limited because the appeal would still need to have been prepared and submitted, and the applicant's appeal statement does itself refer back to the Planning Support Statement submitted with a previous application on this issue. Matters in relation to discontent with the time taken to determine the application by the Council also lie outside of the costs regime. Nevertheless, some residual expense would still have been incurred.
8. On the second ground for the claim, the PPG states that local planning authorities are at risk of an award of costs in preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
9. The second reason for refusal clearly identifies the planning policies contained in the Core Strategy and Development Control Policies Development Plan Document (2008) that the Council consider the proposal would be in conflict with. The Council's appeal statement sets out its related concerns with a satisfactory level of detail. A purpose of such a statement is to amplify the matters which are set out in the reason for refusal and this is adequately achieved by way of planning policy.
10. With regard to the policies of the London Plan, these are not in dispute. This is on the basis that the second reason for refusal makes no reference to London Plan policies. The Council chose to rely on the relevant planning policies of its own development plan and it is entitled to do that.
11. Nor is their evidence of a compelling nature of a particular conflict between the Council's planning policies and the London Plan. The age of the policies is not in itself an indication that they are out of date. With regard to the second ground, the Council has not acted unreasonably.

Conclusion

12. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in so far as the second reason for refusal and the Council not determining similar cases in a consistent manner. An award of partial costs is therefore justified.

Costs Order

13. 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 Havering shall pay to Lifeline Projects, the costs of the appeal proceedings described in the heading of this decision limited

to those costs incurred in the Council's second reason for refusal to the extent set out in this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to the Council of the London Borough of Havering, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Darren Hendley

INSPECTOR