



Costs Decision

Site visit made on 11 July 2022

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2022

Costs application in relation to Appeal Ref: APP/J1535/W/21/3289822 Chapelfield, Sewardstone, Sewardstone Road, Waltham Abbey E4 7RE

- 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 Lansdown for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for demolition of residential dwelling, garden centre and associated outbuildings and erection of 80-bed care home (Use Class C2) (GIA: 4,076 sq m) and associated parking and landscaping.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, in either a substantive or procedural way, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant claims that the Council's assessment that the proposal would not provide dementia care and would not constitute a nursing care home is unreasonable. It is also claimed that the Council failed to adequately consider the care home need evidence, and that it failed to publish revised evidence until after the application was determined. The applicant considers that the Council failed to undertake and supply the Habitat Regulations Assessment (HRA) at the time of the application and the reason for refusal relating to the impact on the Epping Forest Special Area for Conservation (SAC) was subsequently withdrawn. It is further alleged that the reason for refusal relating to the Green Belt was unsubstantiated; that the Council did not accurately assess the proposed cycling provision; and finally that the Council failed to enter into pre-application discussions with the applicant.
4. Although the Council has assessed the proposal as not providing dementia care, it has provided detailed evidence to support its assessment around need and existing supply, by reference to the report and analysis provided by the Housing Learning and Improvement Network (Housing LIN). Although it is alleged that the Council's position on the quantum of need has changed, I do not consider that this has affected their overall assessment on the need for the development or whether such need comprised very special circumstances. An element of judgement is required in making a planning decision where there is

competing technical evidence. Whilst I disagree with the Council's view that there is not a demonstrable need for the appeal development, it was not unreasonable of the Council to take a different view based on the information available to it at the time.

5. It is regrettable that the Housing LIN report was not made available to the applicant until after the decision had been made. However, I am not persuaded that the Council's decision would have been any different had that evidence been provided sooner. Had the Council found a need for the proposal, that does not mean that it would have concluded there were very special circumstances as this is also a matter of judgement.
6. Whilst it is unfortunate that the Council did not undertake the HRA initial review during the planning application process, the officer report clearly sets out the Council's concerns around air quality and recreational impacts on the SAC. Following submission of the appeal, the Council sought to work with the applicant to resolve the outstanding issues relating to this issue and was finally able to withdraw the third reason for refusal. With regard to unnecessary or wasted expense, the applicant states that, had the Council's HRA assessment been undertaken during the course of the application and the applicant been given the opportunity to respond to the matters raised, this would not have been a valid reason for the application to be refused. However, the costs associated with the additional work undertaken by the applicant in relation to this matter were not unnecessary as such matters would be required to be addressed as part of the appeal in any case. I am not persuaded that the Council's handling of this matter should be regarded as unreasonable behaviour.
7. The issue of whether the proposal would have a greater impact on the openness of the Green Belt than the existing development was a matter of planning judgement. The Council's officer report and statement of case clearly set out the Council's reasoning on this matter and so its stance is not made without substantiation. I acknowledge that the Council's officer report did not refer to the Landscape and Visual Impact Assessment. However, for the reasons explained in my decision the Council's overall conclusion that the proposal would have a greater impact on the openness of the Green Belt was not unreasonable. I have reached the same conclusion as the Council regarding this matter. That does not vindicate any procedure or reasoning on their part. However, it establishes that it is not the case that the Council should clearly have reached a different conclusion.
8. The applicant claims that the Council did not accurately assess the proposed cycling provision with reference to an amended plan. Whilst the Council's apparent reference to a superseded plan introduced some uncertainty into this reason for refusal, the point relating to cycling provision formed only part of the Council's wider argument relating to the suitability of the site location relative to public transport and local services. The error has not affected the outcome of the Council's decision or led to unnecessary or wasted expense.
9. Paragraph 049¹ of the PPG states that a local planning authority is at risk of an award of costs if they refuse to enter into pre-application discussions. The applicant submitted a pre-application request to the Council on 2 September 2020. The planning application was then submitted on 19 November 2020.

¹ Paragraph: 049 Reference ID: 16-049-20140306

Whilst there was a considerable lapse of time between the submission of the pre-application request and the planning application without a response from the Council, I can see no evidence that the Council refused to enter into pre-application discussions. Moreover, had pre-application advice been given it is likely that it would have confirmed the Council's position on the proposal and the appeal would not have been averted, and no costs avoided.

10. The Council's decision stands scrutiny relative to the statutory approach to decision-taking. The dispute was a matter of planning judgement, rather than the applicant being forced into an appeal by consequence of unreasonable behaviour. It therefore follows that I cannot agree that the Council behaved unreasonably in preventing a development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

M Ollerenshaw

INSPECTOR