



Costs Decision

Site visit made on 28 November 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Costs application in relation to Appeal Ref: APP/J1535/W/22/3298615 Land to the South of Chigwell Rise IG7 6BN

- 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 Mr F Cheroomi for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for the use of site as a burial ground with associated landscaping, access improvements and ancillary storage and reception buildings.
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Decision

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

Reasons

2. The Government's 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 is seeking a full award of costs against the Council on the grounds that it failed to substantiate its reasons for refusal and has provided vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis.
4. With regard to the first reason for refusal, Members disagreed with their officers with regard to the effect of the proposal on the character and appearance of the area, which is something they are entitled to do.
5. In its Appeal Statement the Council explains why Members considered the proposed development would be harmful to the rural character and appearance of the area¹, and supports this with reference to relevant parts of a submitted Landscape Character Assessment², and to relevant policies within the development plan.
6. Whilst the applicant may not agree with these views, they are neither vague nor generalised and are supported by evidence and by the development plan. I do not share the applicant's view that they do not substantiate the Council's first reason for refusal.

¹ Paragraphs 4 - 13

² Epping Forest Landscape Studies January 2010

7. The Council's position with regard to car parking is a curious one. The limit of 30 car parking spaces was negotiated by officers to mitigate potential harm to the Epping Forest Special Area of Conservation (SAC); Natural England considered the proposal to be acceptable in this regard on that basis, when it was consulted as part of the Habitat Regulations Assessment³ (HRA) by the Council. The consequence of providing additional car parking, to address the second reason for refusal would be a significant risk of harm to the SAC, which would be inconsistent with the Council's HRA and which has not been addressed by the Council in its evidence.
8. Moreover, the submitted Transport Statement Addendum considers that an average of 20 vehicles per burial would be generated, not 15 as stated by the Council, and that this would not significantly affect the operation of the local highway network. The Local Highway Authority (LHA) is satisfied that the proposed level of car parking would not adversely affect highway safety, subject to various conditions.
9. The Council refers to the local knowledge of Members regarding the area and current levels of congestion at peak times, together with concerns that a burial attracting many visitors would overwhelm the available dedicated car parking, resulting in visitors to the proposed cemetery parking on nearby streets.
10. However, the Council has provided no substantive evidence to support this position. Furthermore, should this scenario occur, no compelling evidence has been provided that vehicles parking on nearby streets would be harmful to highway safety, which is not the view of the LHA.
11. With regard to the Council's third reason for refusal, following consultation with various statutory consultees the scope of the proposed development was amended, and a number of conditions were requested to address site drainage, flood risk, and land contamination, amongst other things.
12. The Council again refers to the local knowledge and experience of Members regarding the drainage of the site and its potential to hold water. The suggested conditions would have addressed site drainage, flood risk and contamination risk to the satisfaction of the various statutory consultees. No substantive evidence has been provided to support the Council's position that such measures would not be adequate.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated in relation to the Council's second and third reasons for refusal only, 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 Epping Forest District Council shall pay to Mr F Cheroomi, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in responding to the Council's second and third reasons for refusal of planning permission only; such costs to be assessed in the Senior Courts Costs Office if not agreed.

³ Conservation of Habitats and Species Regulations 2017 (the Regulations)

15. The applicant is now invited to submit to Epping Forest District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Parkin

INSPECTOR