



Costs Decision

Site visit made on 16 January 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15/03/2023

Costs application in relation to Appeal Ref: APP/D5120/W/22/3298738 Praise Embassy, The Redeemed Christian Church of God, 33A Bexley Road, Erith DA8 1SH

- 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 Mrs C Ogedengbe of Praise Embassy, The Redeemed Christian Church of God for a full award of costs against the Council of the London Borough of Bexley.
 - The appeal was against the refusal of the Council to grant planning permission for the continuation of use as a place of worship & educational training centre: I. Place of worship, II. Day Nursery, III. Education and training & community centre, IV. Provision of a disabled access ramp, V. Use of children's play area, VI. Fencing, VII. Details of a scheme for the segregation of traffic and pedestrians within the site.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance ("the 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. Paragraph 049 of the PPG¹ states that "local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing [...] planning applications". It goes on to give examples of such unreasonable behaviour, including:

"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";

"Failure to produce evidence to substantiate each reason for refusal on appeal";

"Refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead"; and

¹ Reference ID: 16-049-20140306

"Not determining similar cases in a consistent manner".

4. There are four elements to the applicant's claim for an award of costs, which together fall into the scope of those four examples. The first is that the proposed development was acceptable in principle, had already been established (under a series of temporary planning permissions) for more than 10 years, that its transport impacts were acceptable and, if further information was required, this could be secured by condition.
5. I agree (and it was not part of the Council's reasons for which planning permission was refused) that the principle of the proposed development is acceptable. It is also a matter of fact that the appeal site has been used as a place of worship and for related nursery, education and community purposes under a series of temporary planning permissions since approximately 2009. Neither main party put forward any substantive evidence (whether positive or negative) about impacts on highways and traffic or the demand for car parking in the area close to the appeal site for the period those temporary permissions were operative.
6. However, I do not consider that the Council acted unreasonably in requiring the appellant to provide satisfactory evidence that the continued and permanent use of the appeal site would not have significant adverse effects on local highways or car parking demand. For reasons which are set out in my main decision, I found that the travel plan evidence submitted by the applicant had significant deficiencies. I also found that the evidence left a considerable degree of uncertainty about the effects on highways and parking, which could not simply be addressed by imposing a condition requiring the submission of an updated travel plan. The Council's decision not to conditionally grant planning permission was also therefore not unreasonable.
7. The second element of the claim is that the reason for which planning permission was refused was "unnecessary and unjustified because the appellant had thoroughly demonstrated that parking demands for the development could be accommodated within the surrounding streets and public parking facilities in the proximity". For reasons which are again more fully set out in my main decision, the deficiencies of the submitted travel plan mean that it did not clearly estimate the likely future demand for parking space arising from the proposal. It also therefore did not demonstrate that this demand could safely be met in the surrounding area. While some aspects of the travel plan's shortcomings such as the impact of the Covid-19 pandemic and lockdowns were outside the applicant's control, I do not consider that the Council acted unreasonably in seeking a greater degree of certainty than had been provided within the planning application.
8. The third element is that the Council had treated applications of a similar nature inconsistently. The Council had granted planning permission for the nursery element of the appeal scheme separately in 2020², subject to a condition requiring the submission of an updated travel plan to address its concerns about the impact on highways and parking. However, although they are at the same location, a 50-place nursery is likely to have a much less significant effect on highways or demand for car parking than the appeal scheme of a church (and related uses) accommodating more than 300 people.

² LPA Ref: LPA Ref: 19/02830/FUL

The two schemes are not comparable in scale, and the Council was not unreasonable to treat them differently.

9. Finally, the fourth element of the applicant's claim is that the failure to give conditional approval to a "broadly policy compliant scheme was unfair and unreasonable". This is effectively a rehash of the first and second elements of the claim, which I have already addressed. None of the grounds which the applicant has advanced amounts to evidence of unreasonable behaviour on the part of the Council.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector