

Costs Decision

Site visit made on 10 November 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27.12.2023

Costs application in relation to Appeal Ref: APP/B1930/W/23/3321204 Grasshoppers Day Care Nursery, 20 York Road, St Albans AL1 4PL

- 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 Childbase Partnership Ltd for a full award of costs against St Albans City & District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the conversion of on-site parking court into garden area for existing children's day care nursery.
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Decision

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

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 and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. In this case the appellant argues that the Council acted unreasonably in not permitting the application within the prescribed period, or indeed at all, given the evidence presented, in particular the Transport Assessment submitted with the application.
4. The relatively straightforward application was submitted on 26 September 2022 and the appellant chased for feedback on several occasions without success, including following the site visit on 5 January 2023. A response was promised in early March but on a further approach on 5 April it transpired the case officer had left the Council with no replacement being advised. Without any progress it was understandable that an appeal against non-determination was lodged on 28 April 2023.
5. Following this unfortunate sequence of events the Council contested the appeal on the basis that the proposal was likely to increase parking demand in an area that suffers from congestion and parking stress. However, the area concerned is subject to on-street parking controls that effectively manage the spaces, ensuring ready availability for motorists that meet the relevant parking criteria. The putative reason for refusal was consequently without any merit.
6. The Council thus failed to produce evidence to substantiate its reason for refusal on appeal, one of the examples in the PPG of unreasonable behaviour that may give rise to an award of costs against a local planning authority¹.

¹ Paragraph 049 Reference ID 16-049-20140306

7. An appeal should not have been required and the appellants costs in pursuing one were therefore an unnecessary and wasted expense. The unnecessary and wasted expense commenced when the decision to appeal was made after 5 April 2023 and excludes the cost of making and progressing the application up to that date and the cost of preparing the Transport Assessment.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 St Albans City & District Council shall pay to Childbase Partnership Ltd, the costs of the appeal proceedings described in the heading of this decision that were incurred after 5 April 2023.
10. The applicant is now invited to submit to St Albans City & 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.

David Reed

INSPECTOR