The Planning Inspectorate

Costs Decision

Inquiry Held on 13 and 14 February 2024

Site visit made on 13 February 2024

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date:23/02/2024

Costs application in relation to Appeal Ref: APP/Z3635/X/23/3331411
Roslin, Rookery Road, Staines-Upon-Thames, Surrey TW18 1BT

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Spelthorne Borough Council for a full award of costs against Roslin Educational Limited.
- The inquiry was in connection with an appeal against the refusal to grant a certificate of lawful use or development for "failure to comply with condition 2 of 09/00277/COU in respect to pupil numbers".

Decision

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

The submissions for Spelthorne Borough Council

2. The application was made on procedural and substantive grounds. The Council claims the appellant has behaved unreasonably by failing to provide sufficient information of a continuous, uninterrupted breach of the condition. Even with more complete evidence of attendance submitted with proofs of evidence, the levels of attendance for which lawfulness was sought was not provided until opening submissions, despite the ongoing professional representation. Moreover, the information provided with the application for the lawful development certificate has been shown to be manifestly inaccurate or untrue.

3. The Planning Practice Guidance (PPG) advises that an appellant is at risk of an award of costs through only supplying relevant information at appeal stage, as opposed to application stage, which is the case here. It is argued that this has resulted in wasted expense for preparatory work that would not otherwise have arisen or was duplicated or unnecessary.

4. In addition, the Council argues that the appellant persisted with the appeal where there was little prospect of success, despite the Council having highlighted the omissions in its statement of case. The appellant "shifted the goal posts" on the day of the Inquiry and even then, provided a revised cap without the necessary evidence. It is claimed the Inquiry could have been avoided had the information been provided at the outset as the appeal could have been determined by written representations at a reduced cost.

The response by Roslin Educational Limited

5. The appellant engaged in ongoing and constructive dialogue during the application stage, which involved providing information and responding to the Council's requests. There were several email exchanges where additional data

was sought by the Council, which was duly supplied, culminating in the Council seeking more time to determine the application. However, the application was refused before the agreed date.

6. Mr Celino explained during the Inquiry that the data was drawn from the software used by the nursery to keep a record of bookings. It was not until December 2023 when it was discovered that detailed data could be extracted. In any event, it is unclear how this has led to additional work because that work would have been required had the detailed data been provided at the outset.

7. The claims in relation to the revised cap are unfounded. The data had been provided, and the revised cap is a matter of judgement based on the evidence. It was assumed that discussions about any cap or threshold would take place with the Council once the officers were comfortable with the breach as a matter of lawfulness. The Council did not ask about the revised threshold at any point. It has not provided its own opinion on this issue, nor has it been explained what extra work was necessitated and why this was wasted.

8. Finally, the Council has not explained why it thinks the appeal could have been avoided. This is not a situation where the appeal had limited chance of success. The data submitted was complete and the revised threshold was fully justified. An Inquiry would always have been necessary due to the dispute about matters of fact.

Reasons

9. 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.

10. The data that was submitted as part of the application was limited. However, the appellant sought to provide more information as it was requested by the Council, including information concerning the time periods when occupation was at its lowest. Mr Celino explained that the data submitted during the application stage was the best available evidence at that time. It was later established that the data could be extracted at a more granular level, and this was provided with the proofs of evidence. Mr Celino's oral evidence on this matter was credible and I do not consider that there was any attempt to deliberately withhold information or mislead the Council.

11. The appellant's position concerning the revised ceiling was not apparent until the Inquiry opened. However, the ceiling sought was based on the data already provided, which was submitted with the proofs. The Council carried out its own analysis of the data submitted, in which the attendance information was presented in different ways. It is not clear how this resulted in unnecessary or wasted expense for the Council, as analysis would still have been required had the suggested ceiling been made clear at the outset.

12. It was not the case that the appeal had limited chance of success, as has been shown by my decision. The Council and the appellant had fundamental differences of opinion on the application of caselaw, among other matters, which required a fact and degree judgement.

13. The Council disputed the need for an Inquiry as it considered the most appropriate procedure would be written representations. However, the

Secretary of State concluded an Inquiry was required as there was a need to hear evidence under oath, which would be subject to cross-examination by an advocate. This was to test the veracity of the data and other claims made by the appellant. It is not apparent that the submission of the complete dataset at the outset would have obviated the need for an Inquiry.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

D Moore

Inspector