



Costs Decision

Site visit made on 5 March 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2024

**Costs application in relation to Appeal Ref: APP/J1535/W/23/3324427
Mossford Green Nursery, Abridge Road, Theydon Bois, Epping CM16 7NR**

- 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 Owen Rowland for a partial award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for development described as 'demolition of existing buildings, erection of replacement dwelling and 5no. new dwellings (reduction following refusal EPF/3379/18)'.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the 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 essence of the applicant's case is that the Council did not accept the comments of its highway adviser that the proposal was likely to generate a similar level of traffic as that generated by the current uses on the site. Instead, in reaching the conclusion that the proposal would result in an increase in traffic movements, the Council treated, as fact, the views of interested parties that the level of traffic generated by the existing use was much lower than that advanced by the applicant using TRICS data. The applicant asserts that the Council placed undue weight on such views and therefore erred in judgement when it refused the proposal for reasons for refusal 2 and 3. This led to unnecessary and wasted expense in the preparation and oversight of the Transport Technical Note.
4. Authorities are not bound to accept the recommendations of their advisers, but the PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal on appeal and if they rely on vague, generalised, or inaccurate assertions about a proposals impact, which are unsupported by any objective analysis.
5. Whilst brief, a clear and reasonable case based on relevant planning considerations was put forward by the Council to justify its conclusion that the site is not suitable for the proposed development and I have agreed. As a result, it follows that I cannot agree that the Council has acted unreasonably or that the applicant was put to unnecessary or wasted expense in responding to reason for refusal 2.

6. The Council imposed reason for refusal 3 due to its concerns that, in the absence of a completed Section 106 planning obligation, the adverse impact of the proposal on the Epping Forest Special Area for Conservation (SAC), due to recreational pressure and air pollution, would not be appropriately mitigated.
7. There is limited evidence before me that the Council placed undue weight on the objections it received from interested parties. Furthermore, adequate explanation has been provided as to why, without the support of traffic surveys, predicted traffic movements was not a robust basis upon which to conclude an increase air pollution within the SAC would not arise. Considering this and the statutory protection given to the SAC under the Conservation of Habitats and Species Regulations 2017, I find that it was not unreasonable for the Council to reach its conclusion in this regard. Accordingly, the appellant was not put to unnecessary or wasted expense in responding to reason for refusal 3.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, for the reasons given above, the application for a partial award of costs is refused.

Elaine Moulton

INSPECTOR