



Costs Decision

Hearing held on 3 April 2024

Site visit made on 4 April 2024

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2024

**Costs application in relation to Appeal Ref: APP/P5870/W/23/3330511
Land at Woodcote Green Garden Centre, Woodmansterne Lane, Wallington
SM6 0SU**

- 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 the London Borough of Sutton for a full award of costs against Fonthill Care.
 - The appeal was against the refusal to grant subject to conditions planning permission for demolition of existing structures and erection of a 70-bed specialist neurological nursing home (Use Class C2) with associated access, parking and landscaping.
-

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 PPG sets out that awards against appellants may be either procedural in regard to behaviour in relation to completing the process or substantive which relates to the planning merits of the appeal.
4. The Council contend that the appellant has substantially amended their case at appeal stage representing a fundamentally different scheme to that assessed at planning application stage and as a result they have incurred unnecessary expense in preparing for the appeal.
5. It is well established that the appeal process should not be used to evolve a scheme and in the interests of fairness it is important that what is considered at appeal is essentially the same scheme that was considered by the local planning authority and interested parties at application stage.
6. The appellant's Supplementary Need Statement provides an analysis of the demand and supply of specialist dementia care home bedspaces. It is apparent from the evidence before me that this document is intended to supplement the appellant's case for the development rather than representing a fundamental shift in its position.
7. To me this information complements the evidence already submitted to provide a more complete picture of the need for bedspaces for patients with neurological conditions. It does not, in my judgement, represent a fundamental shift in the appellant's position or result in a materially different scheme.

8. Dementia is a neurological condition, and it would be reasonable to assume that it would fall under the umbrella of neurological conditions that could well be catered for at the proposed development. Whilst dementia is not included within the list of conditions provided by the appellant, this list is non-exhaustive. In other words, it is not a closed list and therefore patients with other neurological conditions, including those with dementia, could well be supported by the development.
9. The appellant's Alternative Sites Assessment identifies all suitable, available and achievable alternative sites within a 5-mile radius of the site. It is evident that this assessment is a direct response to apparent deficiencies outlined in the Officer's Report to Planning Committee and seeks to demonstrate that there are no other sites within a finite geographical area. I concur with the appellant that this represents a spatial analysis of sites rather than indicating the intended operational catchment of the proposed development.
10. Whilst the focus of the appellant's evidence base relates to the need within the borough, it does set out the national context before establishing the local need. The appellant's approach to establishing need based on the geographical location of the appeal site and within the London Borough of Sutton seems a sensible and reasonable one to me.
11. This approach does not lead me to conclude that the proposed development would be solely for residents of the London Borough of Sutton. Nor is there any substantive evidence to suggest that this is what is being proposed by the appellant. As set out in my decision people are not bound by administrative boundaries and it would be unreasonable to exclude people from the care they require purely because they live outside of the borough.
12. I simply do not agree with the Council that they do not or should not engage with applicants to understand a proposal. This seriously undermines the requirement to work with applicants in a positive and proactive manner as set out in the National Planning Policy Framework.
13. In terms of the additional evidence submitted – it was made available on the Council's website during the appeal consultation period and interested parties were able to view and make representations on it. The Council have commented on the information as part of their appeal submissions.
14. Having regard to the Holborn Studios judgement¹ which follows on from Wheatcroft² the information does not constitute a substantial difference or fundamental change to the application. Furthermore, I am satisfied that no interested parties have been prejudiced in determination of this appeal.
15. Even in the face of supplementary evidence being provided by the appellant, having to respond to it does not strike me as a particularly extraordinary task in the overall appeal process. As such, I do not find that the Council incurred unnecessary or wasted expense in undertaking their preparatory work.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

Conclusion

16. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

B Thandi

INSPECTOR