



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 Fonthill Care for a full award of costs against the London Borough of Sutton.
 - 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.
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Decision

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

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 applicant claims that the Council's assessment was in part based on a misunderstanding of the proposed development and that they failed to adequately consider the need for the nursing home. It is further alleged that inaccurate or untrue information was presented to Planning Committee; relevant evidence was withheld until appeal stage and the Council adopted an unworkable position in respect of the planning obligation.
4. I have no doubt that South West London Integrated Care Board (SWL ICB) (Sutton) looked at the proposal in the round. However, it is apparent from the e-mail chain, provided by the Council, that the data collected and provided to them was based on AQP placements only and not complex care. The data omits these types of placements and the response from the SWL ICB (Sutton) does not provide any comments on the need for complex care.
5. Whilst the Council contend that complex cases and non-AQP placements are included with their evidence there is nothing substantive to support this claim. Therefore, I can only give this aspect of the Council's argument very limited weight.
6. Based on the evidence before me I am of the view that aspects of the development proposals have been misunderstood by the Council namely in respect of the streams of care that would be provided and its intended "catchment area". This is manifested through information being either absent or misrepresented in the report to Planning Committee.

7. I acknowledge that the Officer's report to Planning Committee does indeed set out that the preferred option for spaces is the Any Qualified Provider (AQP) route. However, the report fails to mention that complex cases, such as ones that the proposed development would cater for, sit outside of the AQP and are considered on a case-by-case basis.
8. Whilst there is no certainty that the decision of Planning Committee would have been different, members were not presented with an accurate or complete picture of the consultation responses or the need for bedspaces and therefore they were unable to make a fully informed decision in this regard.
9. Despite the Council's assertions it is evident that comments made by Adult Social Care (ASC) and SWL ICB (Sutton) were not made publicly available therefore depriving the applicant the opportunity to respond accordingly during the course of the application.
10. Furthermore, I note that the applicant made several requests for the comments to be provided prior to the application going to Planning Committee that were not responded to. Whilst the Council advise that the discussions with the ASC and SWL ICB (Sutton) were "complex", having reviewed the e-mail chain I am not persuaded that the discussions were so complex or in a format that could not be shared with the applicant. To my mind there is no reason as to why this information could not have been provided to the applicant when it was requested.
11. The Council's misunderstanding of the development proposals also led to a direct influence over the contents and progress of the s106 obligation. The Council's requirement for the s106 obligation to include clauses restricting occupation of the development to residents of the London Borough of Sutton only and limiting the streams of care that could be provided would not, in my judgement, meet the statutory tests. Their behaviour in this respect was unreasonable and led the applicant to incur the expense of having to produce a Unilateral Undertaking. Such an expense would not have been necessary if the Council had sought clauses that were fair and reasonably related to the development.

Conclusion

12. In this case the Council provided information that is shown to be manifestly inaccurate in respect of the need for complex care spaces. In respect of the full consultation responses from ASC and SWL ICB (Sutton) there is no credible reason why it was concealed at planning application stage only for it to be supplied at appeal when it was previously requested, but not provided. Also insisting that the applicant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, in respect of the planning obligation amounted to unreasonable behaviour.
13. A more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
14. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material

considerations, the development proposed should reasonably have been permitted.

15. The Council behaved unreasonably in both respects and caused the applicant to incur unnecessary expense in addressing these issues in respect of legal input, expert witnesses, the preparation of statements of case and in having to seek information to prepare for the hearing.
16. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs is therefore warranted.

Costs Order

17. 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 the London Borough of Sutton shall pay to Fonhill Care, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of addressing the Council's case in respect of demonstrating a need for complex care spaces, legal input and preparation of the Unilateral Undertaking; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to the London Borough of Sutton to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B Thandi

INSPECTOR