

## Costs Decision

Inquiry held on 21 and 22 June 2016 and 29 and 30 September 2016

Site visit made on 30 September 2016

**by Y Wright BSc (Hons) DipTP DMS MSc MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 28 November 2016**

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### **Costs application in relation to Appeal Ref: APP/W2465/W/15/3141406 52 Western Road, Leicester LE3 0GA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Jamie Lewis of CODE Student Accommodation for a full award of costs against Leicester City Council.
  - The Inquiry was in connection with an appeal against the refusal of planning permission for one five storey block (76 flats) and one five and nine storey block (203 flats) to provide 279 studio student flats (no use class) and two floors of ancillary offices and storage.
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### **Decision**

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

### **The submissions for Mr Jamie Lewis of CODE Student Accommodation**

2. The costs application was submitted in writing during the Inquiry.

### **The response by Leicester City Council**

3. The response was made in writing during the Inquiry.

### **Reasons**

4. The 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.
  5. The appellant applied for an award of costs on two counts, contending that the Council refused the planning application despite there being no material evidence that the development would harm the living conditions of local residents in relation to noise and disturbance or be detrimental to green space. The appellant also contended that the Council failed to substantiate its reasons for refusal during the appeal process.
  6. As both counts relate to a lack of sufficient evidence to substantiate the Council's reasons for refusal I consider them both together. Whilst the first count relates to matters prior to the appeal process, the PPG specifically states that *'behaviour and actions at the time of the planning application can be taken*
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*into account in the Inspector's consideration of whether or not costs should be awarded<sup>1</sup>.*

7. The Council argued that the development would lead cumulatively to harm, exacerbating existing noise and disturbance issues within the area and failing to provide for adequate green space. Amongst other evidence they drew on to support their case was the Student Housing Supplementary Planning Document (SHSPD) 2012. This SPD explicitly considered the development of purpose built student accommodation (PBSA) and found that further large scale schemes to the west of Western Boulevard were unlikely to be acceptable due to cumulative impact. This was the Council's starting point in considering the development.
8. As regards cumulative harm, the Council developed their argument based on a defined neighbourhood and the increase in PBSA over time, supported by an analysis of activity and a record of complaints, albeit that these were fairly limited in number, and was based primarily on the local Councillor's assessment of change. As there is no methodology set out as to how a neighbourhood within the City should be defined for planning purposes, the Council consequently made a judgement when defining the boundary of its bespoke area.
9. Whilst I agree that it is reasonable to determine neighbourhoods by looking at factors including the use of facilities and walking routes, I have found in my main decision that the catchment area for Bede Park is more extensive than that shown by the Council's bespoke neighbourhood. However, whilst I did not agree with the Council, they provided reasoned arguments, albeit that they were ultimately unsuccessful, as to why they had considered the neighbourhood as they did. Furthermore, their reliance on figures predating the SHSPD and the last permission for PBSA in this area, was not unreasonable as it gave a fuller understanding to the development of this sector within this locality.
10. That the Council relied in part on the judgement of a Councillor as regards the cumulative effect of development within on local residents and Bede Park was also not unreasonable. Members are entitled to use their judgement and experience in assessing the impact of development in their local area. The evidence on the effect of development on the character of the area and the way it functions, whilst limited, led the Council to the conclusion that the development would result in a demographic imbalance, even in the absence of a fixed numeric threshold. Whilst I again disagreed with these conclusions in my main decision, this does not mean that in reaching their own judgement the Council were unreasonable.
11. Furthermore I consider that the appellant's implication that the Council's approach was biased in some way, or that they deliberately set out to engineer a reason for refusal is unfounded. The benefits of the scheme were acknowledged by the Council though this was more explicit at the appeal stage. Furthermore the Council did not dispute the need for the development at either the application or appeal stages. I am satisfied that the Council's approach in this regard was not unreasonable.

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<sup>1</sup> Paragraph: 033 Reference ID: 16-033-20140306

12. Turning to the matter of the provision of green space, I find the Council's suggestion that contributions could not be spent on appropriate open space relevant to the development, to be rather unusual. In my own decision I reached a conclusion that a contribution was an appropriate and policy compliant approach. However, I also concluded that this relied on a judgement as to whether the harm such a contribution sought to mitigate was local, that is to Bede Park alone, or referred to a much wider effect on open space and recreational facilities in the City. I am satisfied that in relation to Bede Park the Council introduced some evidence that the park does experience considerable recreational pressures at times.
13. They also made their own judgement about the level of open space to be provided on the appeal site and whether other areas of open space could be considered to be 'public'. The Council's arguments in this regard were clearly articulated and whilst I have ultimately disagreed with their final judgements, the approach taken was not unreasonable.
14. I therefore find that overall, unreasonable behaviour resulting in unnecessary or wasted expense by the Appellant, as described in the PPG, has not been demonstrated. For the reasons given above, an award of costs is therefore not justified.

*Y Wright*

INSPECTOR