
Costs Decision

Site visit made on 27 March 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 12 April 2017

Costs application in relation to Appeal Ref: APP/U4610/W/17/3167131 Land off Wood Hill Rise, Coventry CV6 6GW.

- 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 S Hughes (Diamond Construction Ltd) for a full award of costs against Coventry City Council.
 - The appeal was against the refusal of planning permission for the erection of three dwellings with associated car parking.
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Decision

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

Reasons

2. The *Planning Practice Guidance* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The PPG¹ gives examples of unreasonable behaviour that may give rise to a substantive award of costs against a local planning authority. Amongst other things, this can include '*persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable*'. It can also involve '*preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations*' and '*vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis*'.
4. The essence of the Appellant's claim is that the Council refused planning permission without good cause and failing to have due regard to the 2016 appeal decision². It is further stated that the refusal of the application contrary to the advice of officers was not based on sound planning reasons but on the Council's desire to appease local opposition. As a result, it is argued that this has caused unnecessary or wasted expense in the appeal process.
5. With regards to the Council's decision, the Officer's Committee Report clearly set out the putative reasons for approval. It correctly identified that the

¹ Paragraph: 049 Reference ID: 16-049-20140306

² Pins Ref: APP/U4610/W/16/3152395

- proposal was in accordance with the relevant development plan policies and that significant weight should be attached to the 2016 appeal decision.
6. The effect of the previous scheme on the character and appearance of the area was dealt with succinctly in paragraphs 4-8 of the previous Inspector's decision. Unequivocally paragraph 7 stated "*the appeal proposal would be compatible with the established pattern and grain of the area and as such would not be overdevelopment of the site*". The overall conclusion in paragraph 8 was that the development would comply with the Policies H12 and BE2 of the "*Coventry Development Plan 2001*". Without any evidence being put forward to justify an alternative view, the Council found the current proposal to be contrary to these policies.
 7. Given the short space of time between the 2016 appeal decision and the determination by the Council of the current scheme (approximately two months) there have been no material changes to the appeal site or its surroundings. The Council have not pointed to any change in relevant policy nor does it provide any new information which could warrant any different conclusion on this particular matter. Although the current site is slightly smaller owing to the omission of a strip of land to the rear of 284 Holbrook Lane, I am satisfied it is substantially the same site as the previous scheme. I appreciate the scheme has changed from 4 to 3 dwellings. However the basic substance of the development in terms of its layout and its effect on the character and appearance of the area is at least very similar to the 2016 scheme. I therefore agree with the appellant that, in persisting with its objection on this ground the Council behaved unreasonably.
 8. The application was refused by Members contrary to the advice of its professional Officers. Whilst I accept that the Council is perfectly entitled to disagree with that advice, there is a reasonable expectation that where this occurs it should be based on sound, substantive and defensible planning grounds. In this case there has been a clear and abject failure on the part of the Council to support its reason for refusal. No statement was submitted at the appeal stage and instead the Council was content to rely on the Committee Minutes. These are scant and mainly limited to a record of who spoke and the reason for refusal. Whilst I accept that the Planning Committee must have debated the application, beyond vague and unsubstantiated references to '*poor design*', '*overdevelopment*' and a failure to '*improve the area*', there has been a manifest failure to explain how the character of the area would be impaired or how the cited development plan policies offended.
 9. On the evidence before me, there appears to be little doubt that the decision to refuse planning permission was heavily influenced by local opposition. The Council's submissions are bereft of objective appraisal and substantial evidence. In particular, the failure to provide a clear rationale for rejecting both the advice of its own officers and the judgement of the previous Inspector means that the Council's decision was injudicious and relies on no more than vague and generalised assertions unsupported by appropriate analysis and evidence.

Conclusion

10. Overall, I find that the Council persisted in objections to elements of a scheme which an Inspector has previously indicated to be acceptable. Moreover, the reason for refusal has patently failed to stand up to scrutiny on appeal and

there was a clear failure on the Council's part to produce the evidence necessary to substantiate its reason for refusal. In both respects, I find the unreasonable behaviour threshold has been clearly met in this case.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and that a full award of costs is justified.

Costs Order

12. 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 Coventry City Council shall pay Mr S Hughes, the costs of the appeal proceedings described in the heading of this decision.
13. The PPG makes it clear that the award of costs cannot extend to compensation for indirect losses or those that are unrelated to the appeal itself. With that in mind, the applicant is now invited to submit to the Coventry City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D. M. Young

Inspector