

Costs Decisions

Hearing held on 4 May 2017

Site visit made on 3 May 2017

by Neil Pope BA (Hons) MRTPI

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

Decision date: 17 May 2017

Costs application A in relation to Appeal Ref: APP/N1160/W/16/3157475 Land adjacent to Plumer Road, Plymouth, Devon, PL6 5DZ.

- 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 Anthony Gal for a full award of costs against Plymouth City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for 42 open market apartments and 19 affordable housing apartments with associated parking and ancillary spaces.
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Costs application B in relation to Appeal Ref: APP/N1160/W/16/3157475 Land adjacent to Plumer Road, Plymouth, Devon, PL6 5DZ.

- 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 Plymouth City Council for a partial award of costs against Mr Anthony Gal.
 - The hearing was in connection with an appeal against the refusal of planning permission for 42 open market apartments and 19 affordable housing apartments with associated parking and ancillary spaces.
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Decisions

1. Both applications for awards of costs are allowed in the terms set out below.

Preliminary Matters

2. The applications by the appellant and the Council and their responses to the claims against them were made in writing prior to the opening of the Hearing.
3. In determining both applications I have had regard to the advice within the Government's Planning Practice Guidance (PPG) relating to the award of costs.

Application A

The submissions for Mr Anthony Gal

4. In summary, the Council had behaved unreasonably by refusing permission where there was no technical objection to the proposals and where the site was compliant with policy and allocated for housing in an emerging plan. The applicant had worked with officers to address concerns previously identified by the Council. The appeal was unnecessary and the Council had not substantiated its concerns and reasons for acting contrary to the advice of its officers. It had delayed development that should have been permitted.
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The response by Plymouth City Council

5. In summary, Members of the Council took into account all of the responses and the advice of its officers. The planning system operates in a democratic process and Members are not obliged to follow the advice of its officers. The Council had sought to clarify its concerns and had explained how Members reached a different judgement to its officers based on adopted planning policy.

Reasons

6. In accordance with the PPG, the Council acted promptly in reviewing its case and withdrawing its third reason for refusal. In determining planning applications it is also not bound to accept the advice of its officers. However, where it reaches a different conclusion evidence should be produced to substantiate its concerns. The failure to do so could amount to unreasonable behaviour that causes an appellant to incur unnecessary or wasted expense.
7. Outlook is largely a subjective matter. Having considered all of the evidence and visited the site I found that the outlook of some neighbouring residents would be adversely affected by the proposal. Whilst the Council's officers and I went on to find that the extent of this change in outlook would not, in this instance, be sufficient to withhold permission, it was not unreasonable for Members to reach a different view. The Council did not therefore act unreasonably in withholding permission on the basis of outlook. A full award of costs would not therefore be justified.
8. The situation is however very different in respect of the Council's concerns regarding car parking. Where concerns include allegations of parking stress and risks to public safety, technical evidence, such as parking surveys and recorded incidents of road traffic accidents, should be produced to substantiate such claims and demonstrate that such concerns are well founded.
9. Within the appeal decision I have found that the Council failed to produce any such technical or other convincing evidence on this issue. Instead, it relied mainly upon the anecdotal evidence of some residents. In taking a contrary view to officers, including its transport officer and in setting aside the appellant's detailed Transport Assessment without any countervailing technical assessment before it, the Council acted unreasonably in withholding permission on parking grounds. It failed to substantiate its parking concerns at appeal and, in so doing, caused the appellant to incur unnecessary expense.
10. Given the above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described within the PPG, has been demonstrated and that a partial award of costs would be justified.

Application B

The Submissions by Plymouth City Council

11. In summary, in determining the planning application the Council and the appellant had reached an agreed position in respect of affordable housing provision. However, the appellant's decision to depart from the previously agreed position was unreasonable. His assertion that an off-site contribution was potentially driven by a desire to obtain funds for other initiatives was entirely unreasonable and not based upon any evidence. There was a lack of detail regarding on-site provision and no information had been submitted to

demonstrate that this change in approach complied with policy. Officer time and resource was spent unnecessarily dealing with this matter on appeal and wasted costs were incurred in having to revisit this matter.

The response by Mr Anthony Gal

12. In summary, the Council's application was made in response to the appellant's separate costs application. Furthermore, regardless of the appellant's suggestion of providing an element of on-site affordable housing, the Inspector would want to know if the affordable housing provision was compliant with policy. Even if the appellant's actions were found to be unreasonable the Council was not put to added expense in explaining its preference for off-site provision. Any additional expense incurred by the Council would be minimal.

Reasons

13. As affordable housing provision, whether it be on or off-site, was always part of the proposal the Council would have been required to produce evidence on appeal to justify its preferred stance on this matter. This includes the justification for seeking an off-site rather than on-site contribution, as well as the method for calculating the financial contribution.
14. The evidence produced by the Council prior to the opening of the Hearing was therefore necessary to substantiate its position. Much of this amounted to a record of the discussions between the appellant's agent and the Housing Delivery Officer before the planning application was determined. Whilst I therefore understand the Council's frustration upon receiving the appeal and noting a departure from the previously agreed position, it did not incur unnecessary costs on this matter up to the opening of the Hearing.
15. However, during the course of the Hearing the appellant's position changed again and reverted back to the previously agreed position with the Council for an off-site contribution towards the cost of affordable housing provision. The Council's Housing Delivery Officer was in attendance throughout the Hearing to defend the Council's position, which until late morning, had been contested by the appellant.
16. Had the Council been alerted to the appellant's change in stance at an earlier stage, the matter could have been dealt with by way of an Addendum to the agreed Statement of Common Ground before the Hearing opened. Given the detailed evidence provided by the Council in respect of affordable housing prior to the Hearing opening, including its CIL Compliance Statement, there would have been no need for its Housing Delivery Officer to appear before me as affordable housing provision was no longer a matter of dispute.
17. I therefore find that the appellant acted unreasonably in changing its stance at a very late stage. This resulted in the Council incurring unnecessary expense namely, the costs associated with its Housing Delivery Officer being in attendance throughout the Hearing. This justifies a partial award of costs.

Costs Order (Application A)

18. 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 Plymouth City Council shall pay to Mr Anthony Gal, the costs of the appeal

proceedings described in the heading of this decision. These costs shall be limited to those incurred in responding to the Council's concerns regarding the parking implications (inconvenience and public safety) of the proposed development.

19. Mr Gal is now invited to submit to Plymouth 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Costs Order (Application B)

20. 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 Mr Anthony Gal shall pay to Plymouth City Council, the costs of the appeal proceedings described in the heading of this decision. These costs shall be limited to those incurred by the Council in having its Housing Delivery Officer in attendance throughout the Hearing.
21. The Council is now invited to submit to Mr Anthony Gal, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Neil Pope

Inspector