
Costs Decision

Site visit made on 23 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 9 June 2017

Costs application in relation to Appeal Ref: APP/W0340/W/17/3166443 108 Bartholomew Street, Newbury RG14 5DT

- 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 Miss Sarah Melton of Ressance Ltd for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of planning permission for seven one and two bedroom apartments.
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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) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
3. The application for an award of costs is made on both procedural and substantive grounds. In summary, the applicant says that the Council did not engage with them during the application process as it did not request additional information. It did not act in accordance with paragraph 187 of the National Planning Policy Framework (the Framework) and the application was refused without warning. Secondly, the Council did not give appropriate weight to a material consideration, namely the recent appeal decisions concerning the site¹, as it refused permission in respect of matters where the Inspector had not identified harm.
4. In response, the Council says in summary that it had a dialogue with the applicants and acted reasonably at all times, but it could not permit the application without a completed Planning Obligation. The matter of sunlight and daylight was considered carefully and represents the professional opinion of the case officer. Had the applicant's more detailed assessment been available at an earlier stage, the Council would have reviewed its position.

¹ References APP/W0340/W/15/3137849 & APP/W0340/W/15/3137852.

5. The procedural matters raised by the applicant largely concern the processing of the application, rather than the appeal itself. Therefore, there is no firm evidence before me that the Council acted and behaved in any of the ways listed at paragraph 047 of the PPG or otherwise in a manner which could be regarded as unreasonable in relation to appeal procedures.
6. At paragraph 048, the PPG details when the Council's handling of the planning application might lead to an award of costs. However, this is mainly concerned with cases where the Council fail to determine applications within the prescribed limited, as opposed to when planning permission has been refused. Otherwise, paragraph 033 advises that costs cannot be claimed for the period during the determination of the application, although the behaviours and actions of that period can be taken into account.
7. I can appreciate the applicant's sense of frustration at the manner in which the application appears to have been determined, in that had they been able to supply additional information, they might have been able to resolve some or all of the Council's objections. Even so, the Council's behaviour and actions in relation to the application, although perhaps falling short of the proactive approach encouraged by the Framework, do not in my view do not fall within the scope of what could be regarded as procedurally unreasonable behaviour under the PPG.
8. Turning to the applicant's comments regarding substantive matters. At paragraph 049, the PPG provides a list of examples of when a Council might be at risk of an award of costs due to unreasonable behaviour concerning the substance of the case. These include failing to produce evidence to substantiate their reasons for refusal at appeal, persisting in objections to elements of a scheme which an Inspector had previously found to be acceptable and refusing to provide reasonably requested information. The list is not exhaustive.
9. The Council supplied the applicant with information on which it based its decision, including its sun path analysis and a detailed justification of the car club contribution. This assisted the applicant in the preparation of their case at appeal. Consequently, I am not persuaded that the Council acted unreasonably in this respect.
10. The Council's reasons for refusal concerned three matters. In terms of the first reason on grounds on inadequate parking, I am satisfied that the Council's emerging (subsequently adopted) Housing Site Allocations Development Plan Document (DPD) together with the launch of the Newbury car club represented material changes in circumstances since the previous appeals. Although the current appeal scheme involved a similar number of flats to one of the previous appeals, the above warranted the Council coming to a different conclusion than the previous Inspector in relation to the level of parking provision required. The Council provided detailed and robust evidence to support its reason for refusal.
11. In respect of the second reason, the Council indicated that it was maintaining its position that Policy CS6 of the adopted West Berkshire Core Strategy (CS) should be given full weight. The previous Inspector considered that an affordable housing contribution would meet the statutory tests. However, that decision pre-dated the restriction on seeking affordable housing contributions for developments of ten dwellings or less, inserted into paragraph 031 of the

PPG section 'Planning Obligations' following the Order of the Court of Appeal dated 13 May 2016, which gave legal effect to the Written Ministerial Statement of 28 November 2014. The Council did not produce any substantive evidence to indicate that there were exceptional local circumstances concerning affordable housing in its administrative area that should prevail over the PPG.

12. The third reason for refusal concerned the effect on sunlight and daylight levels enjoyed by the adjacent residential properties. However, the previous appeals concerned buildings of similar design and scale to the current appeal. The previous Inspector fully addressed the effects on the living conditions of adjacent residential properties and concluded that there would be no unacceptable harm in terms of overshadowing or overbearing.
13. I fully understand that the consideration of matters such as sunlight and daylight can often involve judgments being made and parties can legitimately hold different views. However, the Council has not adequately explained why it was considered necessary to undertake a further analysis in relation to a proposal which was materially similar to that considered by the previous Inspector. I have not been referred to any material change in circumstances since the previous appeal which might have affected the consideration of matters of sunlight and daylight and which could have justified the Council introducing it as a reason for refusal. Consequently, by refusing permission for this reason the applicant was put to the unnecessary expense of producing evidence concerning sunlight and daylight in relation to the appeal.
14. The applicant's evidence on sunlight and daylight culminated in the Council declining to defend this reason at appeal. I do not criticize that action in itself, as a review of the case following receipt of the appeal as part of sensible on-going case management is good practice. Nevertheless, withdrawing this reason does reinforce my view that it was not soundly based in the first place.
15. Therefore, the second and third refusal reasons are not underpinned by a body of evidence and they largely lack any substance. Consequently, the Council have behaved unreasonably with respect to the substance of the matter at appeal. As a result, the applicant has been put to additional expense in order to address those reasons at the appeal. This should not have been necessary and could have been avoided.

Conclusion

16. The Council's actions in relation to the appeal procedures and in dealing with the application did not amount to unreasonable behaviour. However, one of the reasons for refusal concerned an element of a scheme which a previous Inspector had indicated was acceptable and there was no evidence produced of a material change in circumstances since that appeal decision. This and another reason for refusal could not be substantiated by evidence at the appeal.
17. Consequently, the Council has behaved unreasonably in respect of the substance of the appeal, as set out in paragraph 049 of the PPG. This has resulted in the appellant incurring additional expenditure in preparing for the appeal, which would otherwise have been unnecessary.
18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to

refusal reasons 2 and 3. The conditions for an award at paragraph 030 of the PPG have therefore been met and a partial award of costs is justified.

Costs Order

19. 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 West Berkshire Council shall pay to Miss Sarah Melton of Rissance Ltd the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to refusal reasons 2 and 3; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to West Berkshire 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.

Stephen Hawkins

INSPECTOR