The Planning Inspectorate

Costs Decision

Site visit made on 23 May 2017

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 2nd August 2017

Costs application in relation to Appeal Ref: APP/P1805/W/17/3168297
Land adjacent to New Inns Lane Rubery, Bromsgrove

- 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 H2Land for a full award of costs against Bromsgrove District Council.
- The appeal was against the refusal of planning permission for the change of use of maintenance/chapel building approved under 12/0448 to allow for cremations to take place, reduction in scale of building and hardstanding.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) makes it clear that parties in planning appeals normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. The applicant suggests that the Council's behaviour falls into several categories of unreasonableness as set out in the PPG.

3. The applicant claims that the Council prevented the development when it should have been permitted and that it produced no objective analysis in support. Whilst the Council's planning officer concluded that very special circumstances existed which outweighed the harm to the Green Belt, there is an element of subjectivity in this judgement in terms of attributing weight.

4. The Planning Committee was entitled to weigh matters differently to the planning officer and to conclude as it did, after considering a detailed officer report which included development plan policies, the planning history of the site and a large number of representations. In reaching its decision it was clear that the Committee considered the extant planning permission upon the site, as this is specifically referred to within the decision notice.

5. The PPG makes it clear that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. This includes failure to produce evidence to substantiate each reason for refusal on appeal and providing vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

6. The Council's statement of case comprised an A4 sheet of paper upon which was the reason for refusal. There was also a paragraph advising that the Bromsgrove District Plan 2011-2030 (BDP) had been adopted and reference was made to policies the Council considered relevant to the appeal proposal. The Council's case essentially comprised the following sentence: 'it is clear from the reason for refusal that the Council consider that the development represents inappropriate development in the Green Belt and the necessary very special circumstances required to approve the development has not been demonstrated.'

7. I find that the submitted evidence does not substantiate the Council's concerns in respect of the alleged harm to the visual qualities of the Green Belt as a result of the 'comings and goings associated with the crematorium', and the 'industrial process of cremations'. Furthermore, whilst my attention was drawn to relevant policies of the BDP, the Council's evidence did not provide an explanation of which parts of the policies the proposal conflicted with. In light of the above, I find that the Council has behaved unreasonably as it has made vague assertions about the impact of the development proposed and failed to substantiate its reason for refusing the planning application.

8. However, the applicant's evidence, with the exception of analysing the proposal against each part of the quoted policies of the BDP was a necessary part of their case. With the exception of the policy analysis, the expense associated with producing evidence for the applicant's case was necessary.

9. In light of the foregoing, I conclude that unreasonable behaviour has been demonstrated, however such behaviour has resulted in unnecessary or wasted expense only in so far as the applicant's analysis concerning Policies BDP1, BDP4, BDP13 and BDP21 of the BDP.

10. The Council is not obliged to agree a Statement of Common Ground with the applicant. Whilst this may have been frustrating to the applicant, this does not amount to unreasonable behaviour on the Council's part.

Costs Order

11. 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 Bromsgrove District Council shall pay to H2Land, the costs of the appeal proceedings, limited to those costs incurred in analysing policies of the Bromsgrove District Plan, namely BDP1, BDP4, BDP13 and BDP21; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

12. The applicant is now invited to submit to Bromsgrove District 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.

R C Kirby

INSPECTOR