
Costs Decision

Site visit made on 31 October 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 8th December 2017

Costs application in relation to Appeal Ref: APP/Q4245/W/17/3179935 Land north of Station Road, Stretford M32 0DZ

- 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 USL Consultants Ltd for a full award of costs against Trafford Borough Council.
 - The appeal was against the refusal of planning permission for the erection of five apartment buildings containing a total of 10 residential apartments, together with associated car parking, open space and infrastructure.
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Decision

1. The application is allowed in the terms set out below in the Formal Decision and Costs Order.

Procedural matter

2. In responding to the costs application the Council conflated matters it considered relevant to the determination of the appeal, subsequent to the appellant's final comments on those, with matters legitimately directed to the costs application. This led to a procedural objection by the appellant which duly resulted in the Council withdrawing its submission and replacing it with a submission more appropriately focused on matters properly raised in the costs application.

Reasons

3. I have taken account of the Planning Practice Guidance which amongst other things advises that costs should only be awarded where unreasonable behaviour has resulted in unnecessary and wasted expense, bearing in mind that parties are normally expected meet their own costs in the appeal process.
4. It is well established that local planning authorities are not obliged to follow the recommendations of their officers to approve applications provided they have demonstrably good reasons for not doing so.
5. This has clearly proved to be a difficult site to achieve a satisfactory scheme of development for and is plainly controversial in the locality. Its planning history includes refusal on appeal and in this instance the Council's planning officer concluded that previous objections, including those of the planning inspector who dismissed the earlier scheme, had been sufficiently well addressed to warrant, on balance, an approval.

6. The Council took a different view on balance and it is pertinent that in respect of the first reason for refusal that this concerned matters susceptible to published guideline standards which were acknowledged not to be met in all instances, thereby requiring specific planning judgement on the circumstances of the case. Moreover, consideration of the impact of the development on the character and appearance of the area is, within broad parameters, an inherently subjective assessment. In this context matters of scale, height, massing, design and the like are all inter-related components of an essentially composite assessment, which is far from being a mechanical exercise readily capable of being compartmentalised as regards its constituents.
7. As it is, my own assessment broadly concurs with that of the Council's planning officer on the matters addressed by that first reason for refusal. However, it is a finely balanced case in those respects and my finding of accordance with the development plan in relevant respects is, fundamentally, judgemental in nature. Accordingly, although I do not in the final analysis agree with the judgement reached by the Council on those matters, I do not consider its position, as outlined in its decision notice and relevant written submissions, to be unreasonable in the circumstances. It had sufficient grounds for concern to legitimately form an alternative view and has explained it in an adequately sufficient and proportionate manner.
8. That aspect of the Council's decision does not therefore meet the requirement for an award of costs.
9. The same cannot be said of the second reason for refusal concerning noise and vibration. This had not featured as a reason for refusal in previous decisions and was not a matter that my colleague inspector had indicated significant concern about. Moreover, the Council has explicitly accepted the principle of residential development on the site and the application was accompanied by specific specialist assessment and recommended mitigation measures endorsed by the Council's own specialist Pollution and Licensing service. Provided the recommended measures are implemented (and they are capable of being secured by planning condition) the technical advice is clear that noise and vibration for future residents would be within established parameters of acceptability.
10. The Council has effectively substituted its own assessment with no evidential basis for doing so and has not adduced any such appropriate evidence in the subsequent appeal proceedings. The concerns alluded to about possible future inhibitions on the increased use of the railway have no firm evidential basis either.
11. All in all, this does in my assessment amount to unreasonable behaviour in the appeal process. It is moreover reasonable to surmise that this has led to some unnecessary and wasted expense in the appeal process, albeit what that is in precise terms would be for the appellant to demonstrate in accordance with relevant established procedures.
12. For the above reasons I consider an award of full costs is not justified but that the unreasonable behaviour of the Council in promoting its second reason for refusal does merit an award against it. Accordingly, I propose to make a partial award of costs in the terms set out below.

Costs Order

13. 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 Trafford Borough Council shall pay to USL Consultants Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting, in the course of the appeal proceedings, those matters concerning noise and vibration specifically which are the subject of the Council's second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Trafford Borough 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.

Keith Manning

Inspector