
Costs Decision

Hearing Held on 5 December 2017

Site visit made on 6 December 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 27 December 2017

Costs application in relation to Appeal Ref: APP/A0665/W/17/3178946 Land at Hoole Way, Chester CH1 3EW

- 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 PJ Properties (Chester) Ltd for a full award of costs against Cheshire West & Chester Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of a student accommodation development with associated landscaping.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. In order to be successful, an application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The applicant's application and the response of Cheshire West & Chester Council were both submitted in writing before the Hearing. The applicant clarified at the Hearing that they only wished to proceed with their application on the basis of paragraphs one to seven as set out in their costs application.
4. At the Hearing, the applicant made several further points orally. They submitted that the behaviour and actions of the main parties at the time of the planning application can be taken into account¹. It was also submitted that the Council's limited evidence is in stark contrast to the applicant's considered approach and substantive evidence; and that members of the Planning Committee who attended the Hearing could not explain, even under questioning, a rationale design case to substantiate their concerns. Thus, it is central to the application that the two reasons for refusing planning permission were, from the evidence presented to the Hearing, erroneous and unsubstantiated. The applicant considers that the Council's behaviour gives rise to a substantive award, in terms of three bullet points in the Guidance².
5. The Council, in response, made a number of points orally. It was stated that

¹ Planning Practice Guidance, Paragraph: 033 Reference ID: 16-033-20140306

² Planning Practice Guidance, Paragraph: 049 Reference ID: 16-049-20140306

paragraphs 2, 3 and 4 of the costs application amounts to a moan about the democratic process. Further points were made to confirm that the Planning Committee's decision was unanimous; that members were entitled to disagree with officer's recommendation; and that the reasons for refusal were clear and specified development plan policies, including the harm that would arise. It was also submitted that members of the Planning Committee who attended the Hearing were able to express why they consider the appeal scheme to be unacceptable.

6. It is clear to see from the evidence that the applicant engaged with the Council both before and during their consideration of the planning application. This resulted in the evolution of the scheme in conjunction with Council officers having regard to local and national planning policies. The applicant also engaged with the Council's Design Review Panel which resulted in amendments to the appeal scheme. In total this has clearly amounted to a significant amount of time and resource. This alone is not sufficient to clearly demonstrate unreasonable behaviour. It does, however, provide the context to the appeal.
7. Council officers are not bound to any views that they express during pre-application discussions when they consider a planning application. Nor are members of the Planning Committee bound to follow their officer's recommendations. Members are also entitled to apportion weight to the various considerations put before them. However, in refusing planning permission the Council did need to justify its stance with objective analysis to substantiate both reasons for refusal.
8. While the Design Review Panel is not a statutory consultee and its view does not bind officers or members to share their view, it did carry considerable weight in this case. This was for three reasons. The first is that the panel commended the analysis presented by the applicant's design team. The second relates to the subsequent amendments made by the applicant in response to the panel's comments. The third stems from the purpose of the panel itself which is to challenge and improve the design quality of new development.
9. Nonetheless, design does require an element of subjective judgement and the length of supporting evidence does not alone justify one view over another. However, the appeal scheme was designed having regard to the approach advocated by the Guidance in paragraph 023³.
10. Evidence presented by the Council relating to the design, height, mass and scale of the building was confined to paragraphs 3.7 and 3.8 of their Appeal Statement. It was explained to me at the Hearing by Councillor Watson that greater weight was put behind the views of the Civic Trust. Councillors Black, Houlbrook and Watson also explained that the proposal appeared to be a very tall building that would dominate and detract from the openness of the junction; that it would have a horizontal rather than a vertical nature; and it wasn't to their taste. I also heard that the nearby tower blocks were not relevant to the proposal nor do they lower the bar of what is acceptable.
11. While it was reasonable to take into account the views of the Civic Trust, the evidence presented by the Council at the Hearing did not significantly expand upon the written evidence contained in the Council's Appeal Statement. The Council's evidence did not objectively evidence why the appeal scheme was

³ Planning Practice Guidance, Paragraph: 023 Reference ID: 26-023-20140306

harmful, having regard to the applicant's analysis, the area's mixed character and the Chester Characterisation Study. The latter identified the opportunity for height on the northern side of the bridge if the development was appropriately designed and mindful of key views. Points made by the Civic Trust also pre-dated changes made by the applicant in advance of the Planning Committee's consideration of the proposal.

12. Although the appeal scheme may not be to every taste, the Council, in respect of design, despite reference to the development plan, failed to produce evidence to substantiate the first reason for refusal and did not offer any objective design analysis to support the assertions made.
13. Added to this, the Council's responses at the Hearing did not also adequately grapple with the case put by the applicant about the scale and massing of the office development⁴ granted planning permission in August 2017. I recognise that the two schemes are not the same, and that each scheme requires consideration on its own merits, but it provided a set of 'parameters' for what the Council had found to be acceptable. I note that the Council had not determined the 2017 office scheme when it refused planning permission for the appeal scheme. However, it was a relevant consideration during the course of the appeal. When questioned, members at the Hearing gave the office scheme no weight and did not explain why the proposed development was more harmful than the office scheme on what is a gateway site. The responses provided only added to the lack of objective design analysis.
14. Although the second reason for refusal does refer to development plan policies, it was, together with the Council's evidence, ambiguous about which occupants on Black Diamond Park would be affected by the overbearing impact of the development, given the size and layout of Black Diamond Park. I pressed the Council to identify which properties in Black Diamond Park would be subject of the alleged 'unacceptable significant impact'. They identified that those closest would, in the Council's view, feel the greatest effect, with the effect lessening further into Black Diamond Park.
15. While residents shared these views, and many other issues relating to their living conditions were explored at the Hearing these were not concerns set out by the Council. Although I recognise members of the Planning Committee did seek to defend the Council's case, the suggested 'significant unacceptable impact' referred to was about a perceived effect and not one that was substantiated by objective analysis and evidence, especially given the parameters set by the office development.
16. The second reason for refusal was also not said to be limited to the built form, but included the use of the building throughout the day. However, this does not entirely sit well with paragraph 1.5 b) of the Statement of Common Ground, where the Council "*accepted that the site is suitable for a variety of uses commensurate..., including specialist forms of residential accommodation.*" Furthermore, points made at the Hearing and in the Council's Appeal Statement about differences between the office use and the proposed use were little more than assertions and perceived generalised differences.
17. Parties in the appeal process are normally expected to meet their own expenses, but they are also expected to behave reasonably. In this regard,

⁴ Council Application Ref: 17/02289/REM

even if the Planning Committee's decision was unanimous and the democratic process was followed by the Council in determining the planning application, the Council has behaved unreasonably. This is because they failed to produce evidence to substantiate each reason for refusal on appeal and made vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by objective analysis. Thus, they prevented and delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

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 Cheshire West & Chester Council shall pay to PJ Properties (Chester) Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Cheshire West & Chester 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.

Andrew McGlone

INSPECTOR