
Costs Decision

Site visit made on 19 December 2017

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2018

Costs application in relation to Appeal Ref: APP/V4630/W/17/3179212 Site of former 105 to 123 Walsall Road, Walsall Wood, Walsall WS9 9AH

- 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 Enterprise Rent-a-Car for a full award of costs against Walsall Metropolitan Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for change of use to car hire business, erection of reception building and construction of car parking area and wash bay.
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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) 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.
3. In this case, the applicant considers that the Council has acted unreasonably with regard to preventing or delaying development which should clearly have been permitted having regard to the development plan, national policy and other material considerations, failing to substantiate their arguments within the appeal process, not following well established case law and national policy in relation to the weight given to an emerging plan and the use of conditions, not taking account of the landowner representations at the application stage, and not reviewing their case promptly. The overarching concern is that by failing to determine the application in a timely manner, the appellant has suffered unnecessary or wasted expense by making an appeal that could have been avoided.
4. Following the submission of the appeal, the Council resolved that had it been in a position to determine the application, it would have granted permission subject to conditions. Within this report it accepted that the development complied with the relevant development plan policies. The only area of concern related to the apparent conflict between the site being identified in the emerging Walsall Site Allocation Document (WSAD) for housing and the granting of permission for a commercial use. Nonetheless, it is important to note that the resolution of the Council was still to grant permission, albeit subject to a temporary condition.

5. Paragraph 048 of the PPG states where an appeal against non-determination is allowed, the Council may be at risk of a costs award if there were no substantive reasons to delay determining the application, and better communication with the applicant may have avoided the need for the appeal. While I note there were some delays in the determination of the application owing to the need for a bat survey, this was submitted some time prior to the submission of the appeal or the report to Committee. With or without their concerns over the WSAD, the Council has provided no justification as to why the decision they eventually came to could not have been made in a timelier manner. In the context of the development complying with the WUDP plan and other material considerations not leading to the putative *refusal* of the application, the delaying of the decision could be seen as evidence of unreasonable behaviour in the context of the PPG.
6. As is evident from my decision, I have also found the Council's overall position in relation to the appeal proposal to be flawed. I acknowledge the Council's desire not to prejudice the delivery of the WSAD. Nevertheless, no substantive evidence was put forward as part of the appeal evidence which demonstrated that granting permission for the proposal would have resulted in any overriding harm to the plan making process or the delivery of the housing strategy. Moreover, apart from disputing whether or not objections from the landowner were before the WSAD Inspector, the Council did not seek to address any of the substantive points made by the appellant or fully explain their position or concerns. Even if the landowner's comments were not before the WSAD Inspector, it is not clear to what extent they were taken into account as part of the application, particularly in terms of the harm that would result from an unrestricted permission. The Committee Report went some way to considering these factors, but did not fully address or rebut the appellant's statement of case.
7. The imposition of the disputed condition would be contrary to advice in the PPG concerning the use of planning conditions. The approach of the Council toward the temporary condition has led to the delaying of development which should clearly have been permitted having regard to its accordance with the development plan and any other material considerations. While not in reference to a refusal, the Council still failed to substantiate why the disputed condition would have been justified in light of the appellant's comments, the landowner's views, the requirements of the PPG or any harm that would have occurred had permission been granted without the condition in place. The outcome of this is that the Council's position relies on vague and generalised assertions about the effect of the development which is unsupported by appropriate analysis and evidence. This is also evidence of unreasonable behaviour.
8. The question then arises as to whether the behaviour of the Council caused the applicant to incur unnecessary or wasted expense in the appeal process. In my view, the combination of the different examples of unreasonable behaviour described above has resulted in unnecessary or wasted expense both in relation to the need to have submitted the appeal, but also in terms of the need to provide additional evidence to address the Council's unsubstantiated concerns. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Walsall Metropolitan Borough Council shall pay Enterprise Rent-a-Car, the full 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.
10. The applicant is now invited to submit to Walsall Metropolitan Borough Council to whom a copy of this decision had been sent, details of those costs with a view to reaching agreement as to the amount.

S J Lee

INSPECTOR