The Planning Inspectorate

Costs Decision

Inquiry opened on 24 July 2018

Site visit made on 31 July 2018

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th September 2018

Costs application in relation to Appeal Ref: APP/X0415/W/18/3202026 Land to the rear of the Old Red Lion, High Street, Great Missenden, HP16 0AU

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by PGMI (Great Missenden) Ltd for 2 partial awards of costs against Chiltern District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for 'Demolition of 3 4-bed houses, a disused industrial building (Use Class B2) and 20 garages, removal of spoil and trees from the rear of the site. Development of 34 residential dwellings comprising 25 houses and 5 flats, with associated landscaping, tree replacement, car parking and internal shared surface road. Change of use of the upper storeys of the Old Red Lion (62 High Street) from office to residential to provide 4 flats. Ground floor building line amendment to southern elevation of the Old Red Lion (62 High Street) to remove 700mm at ground floor only, to provide improved visibility onto the High Street. Amendments to Forge Cottage on Missenden Mews to relocate front door, relocate car parking space and provision of new private amenity space within the site'.
- The inquiry sat for 5 days on 24 to 27 July, and 1 August 2018.

Decision

1. For Application 1, the application for an award of costs is allowed in the terms set out below. For Application 2, the application for an award of costs is refused.

The submissions for PGMI (Great Missenden) Ltd

2. The applications for costs were submitted in writing and further, brief points were added orally after the Council had made its response. In summary, **Application 1** seeks a partial award of costs in relation to the appeal costs associated with reasons for refusal 3 and 4, which dealt with matters of access. **Application 2** seeks a partial award of costs in relation to the appeal costs associated with reason for refusal 5, which dealt with parking concerns.

3. For **Application 1**, a development mix which would produce a 'traffic neutral' scheme had been agreed with the highway authority through a series of emails, culminating in an email from the appellant to the highway authority dated 6 October 2017. This indicated that a traffic neutral mix would comprise 9 flats and 25 houses, and the planning application was submitted on this basis on 18 October 2017. However, despite repeated attempts to contact the highway authority, to chase up any consultation response, it was not until 3 April 2018, 3 days before the application was determined, that the highway authority's comments were forwarded

to the appellant by the Council – even though the Council had received the final version of these comments on 28 March 2018.

4. Despite the appellant requesting many times to be given an opportunity to respond to any comments received, no such opportunity was provided. Indeed the appellant was informed by the Council's Case Officer on the following day – 4 April – that planning permission would be refused. The appellant therefore prepared its transport evidence for the appeal, including an assessment of a 'fall-back' position which it maintained could be pursued if planning permission was not forthcoming. After considering this evidence the highway authority informed the Council that it would not be able to support reasons for refusal 3 and 4 at the inquiry. This decision was reached 1 working day before the opening of the inquiry, without any discussion with the appellant, but simply on the basis of the appellant's evidence.

5. This proves that if the appellant had been given the opportunity to provide the evidence in its transport proof in response to the highway authority's consultation comments, and if that information had been taken into account by the Council, then the Council would not have imposed reasons for refusal 3 and 4. It is no excuse for the Council to say that the appellant should have provided details of the fall-back position sooner. This was not necessary, as agreement had been reached on a traffic neutral development. It was only when the highway authority came back with its consultation response on a different basis to that already agreed, that it became necessary to make reference to the fall-back position.

6. An appeal on these grounds was therefore wholly unnecessary. The Council has acted unreasonably by not allowing the appellant adequate time to respond to the highway authority's consultation comments, and the appellant has incurred wasted expense as a result.

7. For **Application 2**, the appellant had set out its approach to parking demand, in accordance with the National Planning Policy Framework (NPPF), in the Transport Assessment which was submitted with the planning application. In contrast, the Council's evidence, and its refusal of planning permission, were predicated on the dogmatic application of the parking standards set out in Policy TR16 of the Chiltern District Local Plan (CDLP).

8. Reason for refusal 5 was imposed because the Council required its standards to be met, but it was wholly and completely unreasonable to apply Policy TR16 in this dogmatic way. The 2012 issue of the NPPF required consideration to be given to the extent to which all relevant development plan policies were consistent with the NPPF, but at no stage in its decision-making process did the Council consider these issues. The Council failed in its statutory duty by not having regard to this matter.

9. The Council did not undertake any such exercise prior to refusing planning permission, nor when it presented its case in its proofs of evidence. It was only when presenting her evidence in chief that Mrs Smith, for the Council, sought to challenge the appellant's parking demand calculations. However, this proved to be a flawed and unreliable exercise, and once the relevant requirements of the NPPF were properly considered, Mrs Smith conceded, at the end of the first week of the inquiry, that the parking standards in TR16 were inconsistent with the NPPF approach and accepted that the proposed parking provision would be sufficient to meet demand. This position should not have been reached through cross-examination - it should have been the starting point for the Council's decision-making process.

10. The Council had no reasonable basis for refusing planning permission by reference to the Policy TR16 standards, and had no reasonable evidential basis for refusing planning permission on the basis that the number of parking spaces proposed would be insufficient to meet demand. The Council acted unreasonably by refusing planning permission on these grounds and the appellant has incurred unnecessary expense in having to pursue an appeal to overcome this issue.

The response by Chiltern District Council

11. This was also made in writing. For **Application 1**, the Council maintains that it did not act unreasonably. The potential fall-back position was raised for the first time in the appellant's transport proof of evidence, but could have been raised much earlier. Evidence from the appellant shows that it was aware of this potential fall-back position at the time of the Council's refusal, and it could have been raised with the Council following the refusal of planning permission. At the very least it could have been included in the appellant's Statement of Case.

12. Although the appellant states that a traffic neutral scheme was the objective, the highway authority had also always indicated that none of the access points should be subject to an intensification of use. The highway authority's consultation response argued that 2 of the accesses would experience increased use, and this is where the highway authority and the appellant disagreed. The difference of opinion was not confined to the numbers of houses and flats.

13. The appellant knew that the highway authority had concerns regarding use of the access points, as a result of the refusal of the previous planning application, so it made no sense for the appellant to not put forward its best argument (the fall-back position) at application stage. It must be the case that if the appellant had raised this matter before the highway authority's response; or soon after the decision notice was issued; or in its Statement of Case – then the Council would not have pursued reasons for refusal 3 and 4, but would have withdrawn them sooner.

14. Any costs that have been wasted do not flow directly from the appellant's alleged inability to be able to respond to the highway authority's position at the consultation stage, but rather from the appellant's failure to raise the fall-back position at one of the many earlier opportunities it had to do so, before appeal preparation got underway in earnest. The Council did not act unreasonably in this regard and an award of costs is therefore not justified.

15. For **Application 2**, the Council disputes that it applied the Policy TR16 standards on a dogmatic basis. Mrs Smith's proof of evidence does illustrate some consideration of the accessibility of the development, public transport, and the type, mix and use of the development. Mrs Smith also considered a possible relaxation of the standards in the Officer's report to the Planning Committee.

16. When Mrs Smith reconsidered matters in the course of the inquiry she acted reasonably and fairly conceded those matters which it was appropriate for her so to do. A change in position or indeed a wrong answer does not necessarily constitute unreasonableness. The Council maintains that it did not act unreasonably in this regard, and no award of costs should be made.

Reasons

17. The Planning Practice 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.

18. With regard to Application 1 the submitted evidence gives every indication that agreement had been reached between the appellant and the highway authority on a development mix that would provide a traffic neutral scheme. The latest position of both sides in this regard, prior to the submission of the planning application, appears to be contained within one of the inquiry Core Documents – CDA9. This contains an email dated 27 September 2017 from the highway authority to the Council, confirming that a traffic neutral scheme would need to consist of 23 houses and 10 flats. This was responded to by an email dated 6 October 2017 from the appellant's transport consultant, Mr Fitter, which made some minor adjustments to floor areas, leading to a revised traffic neutral mix of 25 houses and 9 flats.

19. Mr Fitter asked the highway authority to review this matter and confirm that it was satisfied with the amended calculation. There is nothing in the evidence before me to show that the highway authority expressed any misgivings on this matter, and the planning application was duly submitted on 18 October 2017. I understand that the consultation period for this application expired on 28 December 2017, but that despite a number of attempts by the appellant to elicit any information regarding the highway authority's response, this response was not received by the Council in its final form until Wednesday 28 March 2018.

20. Although I acknowledge that the Council's Case Officer, Mrs Smith, was on leave on Thursday 29 March, and that this was around the Easter period, with 30 March being Good Friday and 2 April being Easter Monday, no good reason has been placed before me to explain why the highway authority's comments could not have been passed to the appellant on 28 March. Even then, this would have been an excessively long time after the end of the formal consultation period and only 5 working days prior to the application being refused under delegated powers.

21. In fact the highway authority's response was not provided to the appellant until Tuesday 3 April, just 3 days before the application was refused. Moreover, the response took a different view to that which the appellant believed had been the subject of agreement, and recommended refusal on a total of 3 counts. I accept that the lateness of this response may not have been directly down to the Council (although there is no firm evidence before me to suggest that the Council actively chased the highway authority's views), but to my mind the Council then acted unreasonably by not allowing the appellant the opportunity – even at this very late stage – to respond to the highway authority's comments. The Council could have deferred making a decision on the application, but chose not to.

22. I find it very telling that once the highway authority saw the appellant's response to its comments, contained in Mr Fitter's proof of evidence for the inquiry, it came to the view that it could not defend reasons for refusal 3 and 4 – even without discussing this matter with the appellant. This demonstrates to me that had the appellant been given the opportunity to respond to the highway authority's comments prior to the application being determined, there would have been a very strong likelihood that the highway authority would not have recommended reasons for refusal 3 and 4, and that they would never have been imposed.

23. I have noted the Council's argument that the appellant could have referred to the fall-back position sooner, and I accept that this is indeed the case. However, this does not, in my assessment, make the Council's actions any less unreasonable. In any case, I accept the appellant's point that it had no reason to do so, believing as it did that it had reached agreement with the highway authority and had submitted a traffic neutral application to which the highway authority had no objection on

traffic generation grounds. It was, in any case, quite open to either the highway authority or the Council to examine the existing uses on the site and establish what a 'worst case' lawful fall-back position might look like.

24. In light of all the above points I conclude that the Council has acted unreasonably by failing to allow the appellant an opportunity to respond to unexpected comments from the highway authority. As a result, I consider that the appellant has incurred wasted and unnecessary expense having to prepare evidence to defend reasons for refusal 3 and 4. Accordingly a partial award of costs in this regard is justified.

25. Insofar as Application 2 is concerned, I consider that the Council has acted unreasonably in giving more or less full weight to the Policy TR16 parking standards. These standards were certainly the starting point for the Council's assessment of parking demand, and it is clear that although they date back to the adoption of the CDLP in 1997, they do not appear to have been re-visited in light of the approach to parking standards detailed in the 2012 NPPF.

26. However, I do accept that both in the Officer's report to Committee, and in Mrs Smith's proof of evidence, there is an acknowledgement that these standards could be reduced because of the location of the appeal site, its easy access to local services and public transport, and the intended introduction of a residential Travel Plan for the development. That said, the extent of this possible reduction was never fully articulated by the Council, and there was still a difference between the parties on this matter - at least until Mrs Smith's concessions at the inquiry.

27. But notwithstanding the above points, I am not persuaded that the Council's actions can be shown to have resulted in unnecessary or wasted expense for the appellant. Although I acknowledge that some of these matters could have been discussed and possibly resolved prior to the inquiry, it was only as a result of the presentation of further evidence to the inquiry, by both the Council and the appellant, that agreement on this matter was reached.

28. In these circumstances I conclude that a partial award of costs is not justified, insofar as reason for refusal 5 and parking issues are concerned.

Costs Order

29. 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 Chiltern District Council shall pay to PGMI (Great Missenden) Ltd, the costs of the appeal proceedings, limited to those costs relating to reasons for refusal 3 and 4, 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.

30. The applicant is now invited to submit to Chiltern 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.

David Wildsmith

INSPECTOR