



Costs Decision

Inquiry Held on 4-6 December 2018

Site visit made on 6 December 2018

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

an Inspector appointed by the Secretary of State

Decision date: 14th January 2019

Costs application in relation to Appeal Ref: APP/Y1110/W/18/3202635 Land to the west of Clyst Road, Topsham, Exeter, Devon

- 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 Waddeton Park Ltd for a partial or full award of costs against Exeter City Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for up to 155 residential units and a 64-bedroom residential care home.
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Decision

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

Reasons

2. 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. With the agreement of both main parties, the Council's response was submitted in writing after the inquiry sessions.
3. In respect of the claim for the full award, and with reference to PPG paragraph 16-049-20140306, the applicant alleges that the Council behaved unreasonably by refusing planning permission. Among the examples of unreasonable behaviour mentioned by the PPG in that respect are: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; a failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. For the reasons set out in my main decision, I do not consider the Council's first refusal reason to amount to an 'in-principle' objection to the appeal development. It is clear that undue weight was placed upon policy LS1 of the Exeter Local Plan First Review, which the Council accepted at the inquiry should attract minimal weight. However, the refusal reason also refers to policy CP16 of the Exeter City Council Core Strategy (CS), which requires a case-specific assessment to be made.
5. It is accepted that there is no evidence in the Committee minutes of such an assessment having been specifically undertaken in support of the Committee's

decision to refuse planning permission contrary to officer advice, and it is also noted that Committee members did not undertake a site visit. However, I have no reason to doubt that members were aware of the appeal site and its surroundings when taking their decision.

6. Furthermore, and with reference to the above-noted PPG paragraph, it is clear that the Council did in due course provide evidence to substantiate its concerns with respect to CS policy CP16. A planning witness was presented and an analysis was described, leading to a view that the scheme would conflict with that policy – specifically that there would be an erosion of the strategic gap between Topsham and Exeter and that significant landscape harm would arise. Reference was made to relevant evidence, notably the Exeter Fringes Landscape Sensitivity and Capacity Study. Given that these matters were addressed in the Council’s evidence, I do not feel that the Council’s failure to call a specialist landscape witness was unreasonable.
7. Although I have, for the reasons set out in my main decision, not fully accepted the conclusions of the Council’s witness, I agree with the Council that CS policy CP16 would be infringed. However, as also explained in my main decision, I have taken a different view about the resulting planning balance. Nevertheless, this seems to me to represent a difference in planning judgement – most particularly in terms of the apportionment of weight. The fact that I have disagreed with the Council on this matter does not make its actions unreasonable. Drawing these matters together, I conclude that a full award of cost is not justified.
8. The applicant’s claim for a partial award of costs relates to the introduction by the Council’s witness of an argument that the appeal site can be treated as a valued landscape in the terms of paragraph 170 of the National Planning Policy Framework (the Framework). While the Council’s 1st refusal reason made a general reference to the Framework, the first reference to this particular allegation was in the proof of evidence of the Council’s planning witness. It did not appear in the Council’s statement of case.
9. While I accept, first, that a witness has to give honest and professional evidence and, second, that this argument was not carried forward by the Council’s advocate at the inquiry, it remains the case that the applicant had to respond to it. The fact that the Council would not be carrying this argument forward in its case was not made clear at the time of the exchange of proofs. The applicant went on to prepare a rebuttal statement which addresses this, and other, points. Inquiry time was taken up in cross-examining the Council’s witness on this matter. The need to respond to the ‘valued landscape’ argument clearly represented unnecessary expense on behalf of the applicant.
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated in respect of this matter and that a partial award of costs is justified.

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 Exeter City Council shall pay to Waddeton Park Ltd the costs of the appeal proceedings described in the heading of this decision, limited to those costs

incurred as a result of responding to the case of the Council's witness that the appeal site can be treated as a valued landscape in terms of paragraph 170 of the National Planning Policy Framework, such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Exeter City 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.

M J Hetherington

INSPECTOR