
Costs Decision

Inquiry opened on 8 January 2019 and sat for 5 days

Site visit made on 15 January 2019

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 27 February 2019

Costs application in relation to:

Appeal A: APP/B1605/W/18/3200395 &

Appeal B: APP/B1605/W/18/3214761

Land at Grovefield Way, The Reddings, Cheltenham GL51 6RF

- 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 Hinton Properties (Grovefield Way) Ltd for a full award of costs against Cheltenham Borough Council.
 - The inquiry was in connection with appeals against the refusal of planning permission for:
 - (A) 5,034 square metres (sqm) of commercial office space (Use Class B1), 502 sqm day nursery (Use Class D1), 1,742 sqm Aldi food retail unit (Class A1), a 204 sqm Costa Coffee retail unit and drive-thru (Use Classes A1 and A3), with associated parking, landscaping and infrastructure works. Outline planning permission sought for the erection of 8,034 sqm of commercial office space (Use Class B1), together with associated car parking, landscaping and infrastructure works, with all matters reserved (except access) and
 - (B) 5,914 sqm of commercial office space (Use Class B1), 502 sqm day nursery (Use Class D1) and 1,742 sqm Aldi food retail unit (Class A1), with associated parking, landscaping and infrastructure works. Outline planning permission sought for the erection of 8,034 sqm of commercial office space (Use Class B1), together with associated car parking, landscaping and infrastructure works, with all matters reserved (except access).
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Decision

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

The submissions for Hinton Properties (Grovefield Way) Ltd

2. The submission was made in writing. The Council's interpretation of JCS policy SD1 and LP policy EM 2 is legally flawed. Neither policy can be relied upon to refuse permission in either appeal. Policy EM 2 has no application to unimplemented planning permissions. Policy SD1 has no application to non-B1 uses: even if it did apply, the Council accept the text of the policy is complied with pursuant to criteria (vi). The Council make vague assertions about the development plan unsupported by any text. Emerging policy EM3 is subject to objections and it is wrong to refuse planning permission on the basis of an emerging plan when the proposals comply with the adopted development plan.
3. In appeal A, it is unclear what the specific breach of JCS policy SD4 and LP policy CP 7 is in respect of urban design. The Council's evidence does not

examine why the Costa coffee building is objectionable and no design guidance has been identified. This issue was not raised prior to determination and the appellant had worked with the Council and revised the design.

4. Turning to highways, there was extensive consultation between the appellant's consultants and Gloucestershire County Council and Highways England following which no objections to the proposals were made, as confirmed in the Committee Report. There was no material difference between appeal A and the previously granted 2014 proposal.

The response by Cheltenham Borough Council.

5. The Council concedes that the appellant was involved in unnecessary expense in respect of dealing with the highways issue at appeal.
6. The Council's case was made on the basis of non-conformity with the development plan or in the alternative, by reference to material considerations differently weighed, including the emerging development plan. Its case has been fully substantiated by calling experienced and expert witnesses who have presented objective analysis. There is a respectable disagreement of view on the policy meaning and objectives. Planning judgement is required in respect of policies SD1 and EM 2, the main objective of which is to protect employment land. The principle of employment and its deliverability on this site is established. Moreover, it is far too early to say that JCS employment strategy is failing, as monitoring and review mechanisms exist.
7. There are clear reasons for design harm in appeal A, the components of which are properly identified with reference to policy.

Reasons

8. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. The PPG says that local authorities are at risk of an award of costs if they prevent or delay developments which should clearly be permitted having regard to accordance with the development plan, national policy and any other material consideration. Costs may also be awarded if vague, generalised or inaccurate assertions about a proposal's impact are made which are unsupported by any objective analysis; or by unreasonably refusing or failing to determine planning applications, or by unreasonably defending an appeal.
9. The essential point is that the Council did not refuse the proposals on the basis of any non-B1 uses being unacceptable. Reason for refusal No.1 in both appeals refers to *'the amount of the site given over to non-B1 uses in combination with the prominent position they would occupy on the site resulting in a dilution of the character and function of the site as a business and represent an inappropriate balance between B1 and non-B1 uses'*. The concern is displacement of some B1 use, the quantum of which can be defined in various ways. Implicit in that is the recognition that non-B1 uses do contribute to employment, especially, according to emerging policy EM3, sui-generis uses that exhibit the characteristics of traditional B class employment. Witnesses for the main parties agreed at the Inquiry that this emerging policy attracted moderate weight.

10. The Council had seen no evidence whatsoever that the outline B1 use that had already received planning permission in 2014 and 2007 had been marketed in the period up to 2016; and no such evidence was presented at the Inquiry. The appellant had no credible answer to the suggestion that the pressure for new prestige headquarters buildings for organisations expanding out of Cheltenham should normally have led to serious enquiries on such a well-connected site. Moreover the evidence indicated that the amount of land available for B1 employment overall across Cheltenham had been falling over many years, as evidenced in both the Employment Land Review of 2007 and Employment Land Assessment Update of 2015. The supporting text to policy SD1 says at paragraph 4.1.15 that employment forecasts show that the greatest B class employment growth will be in the office, research and development sectors (Use Class B1a/b). This would have been an important factor for the Council.
11. In these circumstances, it was not unreasonable for the Council to be sceptical that the opportunities to market the site and realise its full B1 office potential had been properly explored. I have found that the balance between B1 and non-B1 to be acceptable in both appeals. That does not mean that the Council behaved unreasonably in refusing the applications on employment grounds. This was a question of judgement.
12. The urban design reason for refusal in appeal A specifically relates to the layout of the development and the position of buildings including the supermarket and the Costa coffee drive-thru. Council officers had engaged in discussions on the appearance of the Costa building and the appellant had made changes to the scheme designed to address those concerns.
13. However the reasons for refusal of scheme B do not raise any design or layout concerns. The amount of hardstanding and the position of the supermarket is similar in both schemes. The Council was inconsistent and behaved unreasonably in refusing scheme A on the basis of hardstanding, layout and the position of the supermarket. This would have been difficult to understand for the appellant and involved unnecessary expense in dealing with this matter at the Inquiry.
14. Finally, there was no evidence to justify the Council taking a different view from Gloucestershire County Council and Highways England who advised that in their professional judgement, there were no grounds to object. The Council behaved unreasonably in continuing to pursue highway grounds of refusal.

Costs Order

15. 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 Cheltenham Borough Council shall pay to Hinton Properties (Grovefield Way) Ltd the costs of the appeal proceedings described in the heading of this decision related to a) dealing with the issue of urban design in appeal A relating to areas of layout, areas of hardstanding and the supermarket; and (b) dealing with the issue of highways on appeal A up until the formal withdrawal of reason for refusal 2 on 12 July 2018; such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The applicant is now invited to submit to Cheltenham 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.

Paul Jackson

INSPECTOR