
Costs Decision

Site visit made on 2 July 2019

by Brendan Lyons BArch MA MRTPI IHBC

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

Decision date: 12 September 2019

Costs application in relation to Appeal Ref: APP/Z0116/W/18/3212806 7-29 Wilder Street, 1-3 Backfields and land at the corner of Backfields and Upper York Street, Bristol BS2 8PU

- 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 Watkins Jones Group for a full award of costs against Bristol City Council.
- The appeal was against the refusal of an application for planning permission for redevelopment of existing buildings (except for listed building at 25 Wilder Street) and two commuter car parks to provide purpose-built managed student accommodation (345 beds) (sui generis) and ground floor employment floorspace (Class B1); refurbishment and change of use of 25 Wilder Street to provide a three-bedroom dwelling (Class C3) and associated works.

Decision

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

Application

2. The appellants' application for a full award of costs was submitted in writing within the required timescale. The Council has not provided a response to the application.
3. The appellants' case for an award of costs is that the planning application should not have been refused. They point out that the application had been recommended for approval by Council officers, with no objections from statutory consultees, and that the report to the Planning Committee had concluded the proposal's compliance with policy on all issues. The proposal had been brought forward having been refined over extensive pre-application engagement, and was further amended in response to feedback during consideration of the application. There should have been no obstacle to its approval by the Committee.
4. Committee members resolved to refuse the application for two reasons, relating to loss of employment land and over-concentration of specialist student housing, both of which had been addressed in the report. In respect of employment land, the report had accepted the evidence that the site did not make a valuable contribution to employment and that the appeal proposal would provide an element of new employment space, consistent with or better than other proposals recently permitted. An objective assessment by Committee members could not have come to a different conclusion. In respect

of student housing, there was no evidence to contradict the quantitative assessment set out in the report. The report had also drawn attention to a recent appeal decision where the issue of over-concentration had been considered.

Reasons

5. The Government's Planning Practice Guidance ('PPG') on Appeals 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.
6. The PPG lists examples of types of behaviour by a local planning authority that may give rise to a substantive award¹. These include unreasonable refusal of a planning application, by preventing development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
7. Early engagement and pre-application discussions are strongly supported by the National Planning Policy Framework. It is clear that in this instance, the appellants' engagement with the Council was helpful in identifying obstacles to approval of the initial proposal. However, once a formal application for planning permission is made, the final decision rests with the Council's elected members.
8. The appellants acknowledge that members are not bound to follow the recommendations of an officer report, but rightly expect any contrary decision to be justified on strong planning grounds. In this case, the Council has made very limited submissions for the appeal and the committee minutes are also relatively brief. Little detailed justification for the refusal has been provided.
9. In my decision on the appeal, I accept the arguments made by the appellants on both main issues, but weighed against cogent representations made on the appeal, in particular by an interested party who owns property and operates a business close to the site. The same party made full representations on the planning application on these issues, and spoke at the committee meeting. Further representations on the two main issues were made by the St Paul's Planning Group and the Bristol Civic Society, and on the second main issue by another business operator.
10. On the issue of employment land, the Council's statement confirms that the Committee members concluded that the entire site should be retained for employment use. The issue was dealt with relatively briefly in the committee report. Some reliance was placed on the unsuccessful marketing of the site in 2017 but, as was pointed out in the appeal, the marketing was directed to residential redevelopment and did not in itself establish the site's limited economic prospects. However, the poor utility of the existing buildings was not strongly contested by any party, and there was no evidence that commercial redevelopment would be a realistic proposition. The representations instead focused on the adequacy of replacement provision and the need for a mix of uses. There was also history of other permissions in the area where a reduced area of employment space had been replaced as part of mixed use development. While previous decisions cannot be absolutely binding, the PPG

¹ Paragraph 049

advises that failure to determine similar cases in a consistent manner can be taken as unreasonable². In the light of all the submissions, there appears to have been no clear evidence to support the committee members' conclusion. Their decision on the issue was unreasonable.

11. The issue of concentration of student housing received more lengthy consideration in the committee report, drawing comparison with other areas of the city centre. Representations focused on other schemes already permitted in the area, and evidence of a continuing trend for increased numbers. The level of concentration of student accommodation found acceptable in a previous appeal³ is an important consideration, but that was for a much smaller proposal and each local area has its own characteristics. On this issue, in the absence of any adopted policy limit or target, an element of judgement comes into play. While physical effects of large-scale student accommodation can be addressed by good management, less tangible effects on the character of local communities are more difficult to predict. While I have found against the conclusion reached by the Council members, in the light of the submissions before them I do not find their decision manifestly unreasonable.

Conclusion

12. In the absence of a detailed response to the costs application, the full explanation for the Council members' decision making remains rather opaque. But, for the reasons set out above, I find that the decision reached on the issue of concentration of student housing was not unreasonable, but that on employment land was unreasonable.
13. Therefore, the appellants would have had to incur some costs in submitting an appeal on the matter of housing concentration. But the appeal component on the issue of employment land would have involved additional expense, including the cost of commissioning a further specialist report on the commercial property market in the city. They were able to draw on this report to respond to detailed representations made by one of the interested parties, but also had to commission further expert advice. It is not certain that representations of such depth would have been submitted had the Council not refused the application on this issue. I cannot conclude that the appellants would have needed to incur these costs in any event.
14. In summary, I find that unreasonable behaviour resulting in unnecessary expense has been demonstrated, but limited to the matter of employment land only. A partial award of costs is therefore justified.

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 Bristol City Council shall pay to Watkins Jones Group the costs of the appeal proceedings in respect of the first reason for refusal of the planning application, 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.

² Paragraph 049

³ Appeal ref APP/Z0116/W/18/3194372

16. The applicants are now invited to submit to Bristol 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. 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.

Brendan Lyons

INSPECTOR