
Costs Decision

Site visit made on 6 August 2019

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Costs application in relation to Appeal Ref: APP/G3110/W/19/3230317 3 Hurst Street, Oxford OX4 1EZ

- 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 Mr Feras Al Zudifor for a full award of costs against Oxford City Council
 - The appeal was against the refusal of planning permission for the change of use of building from Offices (Use Class B1) to Non-residential Institutions (Use Class D1).
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Decision

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

Procedural Matter

2. The application for an award of costs was submitted by Mr Feras Al Zudifor. It has subsequently been confirmed to me that the applicant is a director of City College Oxford, who were the applicants for planning permission, and appellants for the appeal. I am therefore satisfied that Mr Feras Al Zudifor was a participant in the planning process.

Reasons

3. Paragraph 030 of the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG also highlights that an example of unreasonable behaviour is a failure to substantiate a reason for the refusal of planning permission.
4. The applicant has contended the Council acted unreasonably in that it failed to consider the supporting text of Policy ED9 of the Oxford Local Plan 2001-2016 (2005) (the Local Plan); that inappropriate weight was placed on Policy E3 of the emerging Oxford Local Plan 2036; and that the Council did not consider Policy CS16 of the Oxford Core Strategy 2026 (2011) (the Core Strategy) as part of its assessment of the development.
5. In respect of Local Plan Policy ED9, the preamble to the policy is clear that it relates to the provision of private colleges within the City Centre, District Centres and secondary shopping frontages. The policy itself lists the criteria by which such proposals in, in the prescribed locations, would be assessed. The policy is silent on how proposals for private colleges should be considered when located outside of the specified areas.

6. Given this, the Council should have considered whether any harm would emanate from the retention of the appeal scheme with reference to the National Planning Policy Framework (the Framework). I do not appear to have any evidence before me that is indicative that such an exercise was completed.
7. The Council has described the appeal site as being poorly located. However, I have not been provided with any significant evidence to corroborate this position. Indeed, some of the evidence before me indicates that the site is in a sustainable location, with good public transport links available within the wider area. Accordingly, I find that the Council's reason for refusal was not properly substantiated, which has resulted in wasted expense on the part of the applicant through pursuing an appeal.
8. The Council has placed some weight on an emerging policy. The Council did not err in referring to this policy, despite it being the subject of unresolved objections as it was also acknowledged that the weight that could be attributed to it was limited. This is in accordance with the PPG. Consequently, I do not find the approach taken by the Council to be unreasonable. In addition, the Council has not relied upon Policy CS16 of the Core Strategy in its refusal of planning permission. However, these factors do not detract from the reason for refusal not being substantiated through a failure to assess the scheme against the wider requirements of the Framework.

Conclusion

9. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described the PPG, has been demonstrated and that an award of costs is justified.
10. 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 the Oxford City Council shall pay to Mr Feras Al Zudifor, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to the Oxford 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.

Benjamin Clarke

INSPECTOR