
Costs Decision

Site visit made on 4 November 2019

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 16 December 2019

Costs application in relation to Appeal Ref: APP/P1805/W/19/3230823 Land to the rear of 1-6 Smedley Crooke Place, Hopwood, Worcestershire

- 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 Cawdor Capital (Hopwood) Limited for a full award of costs against Bromsgrove District Council.
 - The appeal was against the refusal of planning permission for up to 10 two-storey dwellings, and alterations to existing access.
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Decision

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

Procedural Matter

2. As well as seeking costs against Bromsgrove District Council, the application also seeks an award against Worcestershire County Council, as Highway Authority. However, the appeal was against the decision of the Local Planning Authority, and therefore any application for costs can only be made against that body. I have dealt with the costs application on that basis.

Reasons

3. The Planning Practice Guidance advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another to incur unnecessary or wasted expense in the appeal process. Examples given in the PPG include failure to properly apply planning policies, and failure to substantiate reasons for refusal.
4. The Council's decision to refuse planning permission was based on four refusal reasons (RRs). RR1 related to Green Belt (GB) policy, and turned on the question of whether the appeal proposal would have a greater impact on the GB's openness and purposes than the existing use for storage. The view that the Council took on this point was different from the one that I came to in my appeal decision. However, this was a matter of planning judgement, on which opinions may differ without being unreasonable.
5. In the case of RR2, relating to highway matters, the Council considered that the proposed scheme would be detrimental to safety. In this case, for the reasons set out in the appeal decision, I agree. But in any event, this was again a matter of planning judgement, on which the Council was entitled to take a different view from the appellants. For the same reasons, the Council

was also justified in relying on the evidence of the Highway Authority, even though this disagreed with the conclusions of the appellants' safety audit.

6. In relation to both RRs 1 and 2, the Council gave relatively little weight to the fall-back position advanced by the applicants, including the possibility of a future intensification of the storage use. On this, the Council was also not persuaded by the arguments contained in the Counsel's opinion produced by the appellants. But, as that same legal opinion points out, weight is a matter for the decision maker. Having taken the view that they did, as to the harmful effects on the GB and highway network, the Council was entitled to take the view that this outweighed the impact of the existing use, even allowing for any intensification.
7. On both of these RRs, the Council also apparently reached a different decision from that which they themselves had taken previously in the case of an application at Kiln Farm, Alvechurch. Consistency in decision-making is important. However, planning decisions often involve balancing a number of different considerations which may pull in different directions, and even where some of the circumstances may be similar, it is rare for them to be identical. From the information before me, I am not in any position to judge whether there was any inconsistency.
8. With regard to RR4, relating to Policy H2 of the Neighbourhood Plan, the terms of criteria (a) and (f) were quite clear, and although an element of planning judgement was still required, it is difficult to see how the Council could have come to any other decision than to find the appeal proposal to be in conflict. Although the APNP was not yet 'made' when the Council made its decision, it was at a very advanced stage, and the Council was entitled to give it significant weight. The arguments relating to the fall-back use, and consistency with Kiln Farm, are not relevant to RR4. As set out in the appeal decision, I agree with the Council's conclusions on this issue.
9. In the light of all the above, I find no evidence of any unreasonable behaviour by the Council in relation to RRs 1, 2 or 4.
10. In the case of RR3, relating to affordable housing, the position is somewhat different. The RR firstly stated that the proposal was contrary to Policy BDP8, but this was quite clearly factually incorrect. In addition, RR3 then went on to suggest a conflict with paragraph 63 of the NPPF, and again, for the reasons explained in the appeal decision, this too was erroneous; or at the very least, RR3 overstated the extent of any conflict. The officer's report, and the Council's appeal statement, did make it clear that the Council's position was based on giving more weight to the NPPF, as the more recently published document. But it is also clear that this judgement was based in part on a misunderstanding of the policies in question. The Council therefore led itself into an untenable position. Consequently, in refusing permission on the grounds of RR3, the Council acted unreasonably.

Conclusion

11. In view of the Council's unreasonable behaviour in respect of RR3, a partial award of costs is made in favour of the appellants, limited to those costs incurred in contesting that refusal reason.
12. In respect of the remaining three RRs, I find no unreasonableness, and therefore no further award is due.

Costs Order

13. 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 Bromsgrove District Council shall pay to Cawdor Capital (Hopwood) Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in connection with Refusal Reason 3, relating to affordable housing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Bromsgrove 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.

J Felgate

INSPECTOR