



Costs Decision

Site visit made on 26 November 2019

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Costs application in relation to Appeal Ref: APP/J2373/W/19/3236348 Anchorholme Methodist Church, North Drive, Blackpool FY5 3PG

- 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 Chris Chadwick (Melrose Developments Limited (1996) Pension Fund) for a full award of costs against Blackpool Borough Council.
 - The appeal was against the refusal of planning permission for erection of a convenience store with associated access, parking and landscaping.
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Decision

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

Reasons

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) 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.
3. Paragraphs 046 to 049 set out the circumstances when the behaviour of a local planning authority might lead to an award of costs. These can either be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples of unreasonable behaviour by a local planning authority includes introducing fresh and substantial evidence at a late stage; prolonging the proceedings by introducing a new reason for refusal; deliberately concealing relevant evidence at planning application stage or at subsequent appeal; 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. The case for the appellant is essentially that the Council has behaved unreasonably in that it used a draft policy to justify the provision of a retail impact assessment; it concealed and failed to have regard to advice received from WYG; it misapplied policies CS7 and CS12 of the Blackpool Local Plan Part 1: Core Strategy (2012 – 2027) adopted January 2016 (CS); that it failed to produce evidence to substantiate the reasons for refusing the application and finally that it introduced fresh evidence regarding sequentially preferable sites at the appeal stage.
5. As can be seen from my decision, I have allowed the appeal and granted planning permission for the proposal as I do not consider that the Council's reasons for refusal are justified.

6. As stated in my decision letter, a Retail Impact Statement was submitted with the application, and indeed with the previously withdrawn application (ref 18/0384) and an updated statement was submitted with the appeal. The appellant questioned the need for such a statement having regard to the threshold set out in paragraph 89 of the National Planning Policy Framework (the Framework) and having regard to the status of Policy DM16 of the emerging local plan but states that one was submitted in order to progress the application. Paragraph 89 of the Framework refers to a "proportionate, locally set floorspace threshold" but does not state what form this threshold should take, that is whether it must form part of an adopted development plan policy. The Council's Executive agreed to the introduction of a locally set floorspace threshold in July 2018 having regard to the findings of the Blackpool Retail, Leisure and Hotel Study (2018).
7. Irrespective of what weight ought to be given to the threshold being applied by the Council and to emerging plan Policy DM16, a Retail Impact Statement was submitted by the appellant and was duly considered by the Council. The Council did not refuse the application on the basis of the lack of an assessment. If the appellant felt so strongly that one was not required then they had the option of not submitting one. However, for the reasons stated above they did. Under these circumstances, I do not consider that it has been demonstrated that the Council behaved unreasonably, particularly given that no reference was made to Policy DM16 or to the locally set floorspace threshold in the Council's reason for refusal.
8. It appears that the Council sought retail advice from WYG when considering the previous application for the site (Ref 18/0384) and reference was also made to advice having been received from the Council's retail consultants in the committee minutes relating to the appeal application. The appellant contends that the Council has sought to conceal the WYG advice and that in refusing the application it has not had due regard to it. Although the Council did not submit a copy of the advice with the appeal or directly refer to it in its committee report, I understand that it was received in relation to the previous application. I have seen no evidence to suggest that the Council has purposefully sought to conceal the advice and whilst WYG were commissioned by the Council, it is not duty bound to act upon the advice it received from them. The Council cannot be said to have acted unreasonably provided that sufficient evidence has been produced to substantiate the reason for refusal relating to retail impact. I will consider this matter further in due course.
9. With regard to the alleged misapplication of CS policies CS7 and CS12, although these policies were referred to in the Council's second reason for refusal, no specific analysis of them and their relevance to the proposal was included within the Council's Statement of Case. Though some limited reference to failure to enhance character and to secure a better quality of life for residents has been referred to in the Council's costs rebuttal, in light of the very limited evidence in relation to these policies I am of the view that they are of limited relevance to the proposal and the issues in dispute. Whilst Policy CS7 refers to character, this is in the context of quality of design as opposed to the use being proposed. Policy CS12 refers to the Council supporting specific development and investment. It does not include any particular provisions to be met by the proposal.

10. Given my findings in relation to the relevance of these policies to the proposal and having regard to the very limited evidence and analysis put forward by the Council regarding them, I consider that the Council has behaved unreasonably in referring to these policies in reason for refusal 2 and that this unreasonable behaviour has caused the appellant unnecessary expense in the appeal process.
11. With regard to the substance and quality of the evidence put forward by the Council in defending its decision, I note that the Council's decision ran contrary to the advice that it received from the Highway Authority and to the advice that it received on a previous application from its retail consultant. Nevertheless, the Council has produced evidence and set out reasons within its Statement of Case explaining why it considers the proposal to be unacceptable. Although its evidence has not been produced by highway or retail specialists, it seeks to set out why the particular circumstances of the site means that the proposal would have an unacceptable impact. Whilst I disagree with the Council's conclusions on the impact of the proposal, I am nevertheless satisfied that it produced sufficient evidence to substantiate its reasons for refusal.
12. Although the Council accepted that there were no sequentially preferable sites at the application stage, at appeal it considered that 3 other sequentially preferable sites were available. I have seen no evidence to suggest that these sites were available when the application was determined and so could have been referred to any earlier by the Council. Although the Council has not specifically stated why they are considered to be suitable other than that they are within or on the edge of existing centres, I do not consider that this in itself constitutes unreasonable behaviour particularly given that the appellant has had the opportunity to consider and comment on them.
13. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary expense described in the NPPG has been demonstrated in relation to the misapplication of policies CS7 and CS12 but not in relation to the other matters cited by the appellant. Accordingly, a partial award of costs is justified.

Costs Order

14. 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 Blackpool Borough Council shall pay to Mr Chris Chadwick (Melrose Developments Limited (1996) Pension Fund), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the misapplication of policies CS7 and CS12; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Blackpool 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.

Beverley Wilders

INSPECTOR