



Costs Decision

Hearing Held on 4 February 2020

Site visit made on 4 February 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Costs application in relation to Appeal Ref: APP/P4605/W/19/3231439 Land adjacent to 314-320 Tile Cross Road, Birmingham, B33 0ND

- 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 Tom Collins for a full award of costs against Birmingham City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for use of land for the stationing of caravans for residential purposes and erection of single storey detached building.
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Decision

1. The application for an award of costs is allowed in part.

Reasons

2. Planning Practice Guidance ('PPG') 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.
3. The appellant submits that the Council has acted unreasonably in that it has failed to substantiate its reasons for refusal, and has withdrawn elements of its original case, including on the day of the hearing. Accordingly, it is asserted that the Council has prevented or delayed development which should clearly have been permitted.
4. The Council's third reason for refusal states that "*the proposed development site is not identified or allocated to provide accommodation for Gypsies or Travellers and is therefore considered contrary to Policy TP34*". However, Policy TP34 is clear that other proposals for gypsy/traveller sites (on unallocated sites) will be permitted where certain criteria are met. It was therefore unreasonable for the Council to argue that the development was contrary to this policy simply by virtue of being on an unallocated site.
5. In addition, the Council asserted in its Statement of Case that the development would be contrary to all 4 of the criteria in the second part of Policy TP34. However, for the reasons given in my Decision the site is clearly in an accessible location as the Council has since conceded. Moreover, the submitted plans illustrate that there is clearly sufficient space for vehicle parking and manoeuvring within the site, and the Highway Authority did not object to the access on highway safety grounds. The Council therefore acted unreasonably in arguing that the development conflicted within these elements of the policy.

6. The Council also disputed whether the appeal site consists of previously developed land. However, the Council's Statement of Case acknowledged that the site is mostly covered in hardstanding, and the slabs to the former garage block buildings were clearly visible during my site visit. The remains of those structures, and the associated fixed surface infrastructure, have clearly not blended into the landscape. Whilst the Council assert that the site "*visually does not appear to have been degraded by a former use or activity*", that has no bearing on whether it consists of previously developed land for the purposes of Annex 2 of the National Planning Policy Framework. In view of these points, it was unreasonable for the Council to assert that the site did not consist of previously developed land.
7. Whilst the Council withdrew a number of these objections in the Statement of Common Ground, and at the hearing, it did so only after the appellant had submitted their Statement of Case. Whilst only a relatively short section of this document is given over to addressing these matters, the appellant has nonetheless incurred unnecessary expense in doing so.
8. Separately, the Council's first and second reasons for refusal relate to the effect of the development on the character of the area. In support of this, the Council has provided a detailed analysis of the proposal's effect and referred to provisions within its own policies and guidance. Whilst I have come to a different view, consideration of these issues is often a matter of judgement, and the Council did not act unreasonably in this regard.
9. Finally, the Council's Statement of Case asserted that the development would harm the living conditions of neighbouring occupiers, although it provided little supporting analysis. In this regard, it is unclear precisely what harm the Council considered would arise. However, a number of detailed responses were also submitted by interested parties in relation to residential amenity, which the appellant has had to address. Accordingly, no unnecessary or wasted expense has been incurred in this regard.

Conclusion

10. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. 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 Birmingham City Council shall pay to Mr Tom Collins the costs of the appeal proceedings described in the heading of this award limited to those costs incurred in rebutting the matters described in Paragraphs 4-7; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. Mr Tom Collins is now invited to submit to Birmingham 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.

Thomas Hatfield

INSPECTOR