



Costs Decision

Site visit made on 24 June 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

Costs application in relation to Appeal Ref: APP/D1780/W/19/3243192 Land South of University Car Park, Broadlands Road, Southampton SO17 3AT

- 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 University of Southampton for a full award of costs against Southampton City Council.
 - The appeal was against the refusal of planning permission for a surface-level car park, landscaping and associated development.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. In this case, the refusal of planning permission by the Council's Planning and Rights of Way Panel was contrary to an officer recommendation to grant permission. Whilst elected members are not obliged to follow their officers' advice, PPG indicates that local planning authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal. In this case, there is one refusal reason indicating that there would be disturbance arising for neighbouring occupiers in relation to noise from additional vehicle movements and associated emissions.
4. The applicant is seeking a full award of costs on substantive grounds in relation to inconsistencies in the Council's evidence to defend its decision and for the additional evidence in relation to noise and air quality that has been produced in response to that decision.
5. The Council's Panel was not duty bound to accept the applicant's technical evidence on noise and air quality, or the observations of its own Environmental Health Team that raised no objection to the proposal. But no alternative technical evidence was submitted to substantiate the Council's refusal reason. Its appeal statement instead relied on reasoning.
6. In relation to noise, the Council refers to the subjective nature of its impact on those affected and to the sudden non-continuous noise events that would occur

in the car park. In relation to emissions, it refers to a general awareness of odour but there is no substantiation of why this should be a particular problem or recognition of the separation of much of the appeal site from the houses. The rear elevations and gardens the Council claims would be most affected by the proposal would be just as close to the carriageway to Broadlands Road, the current main source of vehicle noise and emissions, as to the nearer parts of the appeal site.

7. The Council points out that Panel members had regard to the objection letters and depositions on the proposal as material considerations in their decision. Yet none of the representations submitted were from a resident at the Broadlands Road houses, referred to in the refusal reason, and none referred to the specific impact on residents here. Whilst air quality issues were raised, these were at a more strategic level to do with sustainability issues in general and the overall number of parking spaces to be provided at the University.
8. The Council has referred to development plan policies in its refusal reason and appeal statement, but there is insufficient evidence to establish a level of harm that would indicate conflict with these policies. Its actions have not resulted in the presentation of full and detailed evidence to support their case, but rather *"generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis"* contrary to paragraph 49 of the guidance on costs in PPG.

Conclusion

9. The Council's actions have resulted in unnecessary and wasted expense, as described in PPG. An award of costs, to cover the expense incurred by the applicant in contesting the appeal, is therefore justified.

Costs Order

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 Southampton City Council shall pay to University of Southampton, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Southampton 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.

Rory MacLeod

INSPECTOR