



Costs Decision

Site visit made on 4 August 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2020

Costs application in relation to Appeal Ref: APP/Z2315/W/20/3252022 Astley House, Albert Street, Burnley BB11 3DE

- 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 HPW Ltd. for a full award of costs against Burnley Borough Council.
 - The appeal was against the refusal of an application for planning permission for the redevelopment of existing industrial building as supported accommodation.
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Decision

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

Reason

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Local planning authorities are at risk of an award of costs against them where there is evidence of preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal or vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicant states that the Council have erred in its decision making on four counts. Firstly, that it misapplied the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires where in making any determination under the planning Acts, regard is to be had to the development plan, and the determination shall be made in accordance with the plan unless material consideration indicates otherwise. Secondly, that the Council incorrectly applied national described space standards to the development. Thirdly, that the Council failed to consider imposing a planning condition to make the development acceptable in planning terms in regard to security and safety measures; and, fourthly, it failed to recognise that the re-use of the building would bring about benefits including improved general character, outlook and security.

5. The applicant provides evidence that these concerns had been highlighted to the Council after refusal of an identical application¹ and prior to the re-submission application subject of this appeal. The appellant therefore considers that the necessity for the appeal could have been avoided.
6. The Council's first reason for refusal fails to refer to policies within the development plan. It relies on the requirements of Paragraph 60 of the National Planning Policy Framework (the Framework) which, as a material consideration, it is entitled to do. However, the essence of the reason is limited to the position that the identified requirement for the type of housing proposed is currently being met.
7. However, the Council's statement of case (SoC) fails to acknowledge that the requirement in the Framework is only to meet the **minimum** need. In the absence of policies within the development plan or the Framework indicating otherwise the presumption in favour of sustainable development² applies. Consequently, there is no requirement on the part of the applicant to justify additional provision against projected figures, which, for the specific housing type, may be subject to changing conditions throughout the plan period.
8. Although the SoC expresses concern over the integration of the proposal with delivery provided by existing partners and the way the hostel might be managed, these matters are not expanded to a natural conclusion. Subsequently, the Council has failed to substantiate that harm would arise from those concerns or that conflict with the development plan or the Framework would arise in respect to housing provision. Accordingly, I find that there were no substantive grounds to refuse the application in regard to matters of housing supply.
9. With regard to space standards, the Council's reason for refusal does not refer to the national standards³. The case officer's report identifies that those standards provide a suitable starting point for assessment; a view with which I concur. However, there is little objective analysis of the quality of the spaces that would be provided or justification as to why a lesser standard might be inappropriate for a temporary form of accommodation.
10. Whilst the Council highlights concerns over existing small two bedroomed terraces, this has little bearing on the development proposal which is neither new housing or intended for permanent living. In the absence of any formally adopted standards for the type of accommodation proposed, I conclude that the Council subsequently failed to substantiate this reason for refusal through objective analysis and that the stated reason for refusal therefore lacked the clarity and precision required by Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to sufficiently explain the Council's decision.
11. In relation to safety and security matters, a response of the Lancashire Constabulary (LC) to the earlier planning application was extensively reproduced in the case officer's report for the appeal scheme. This highlighted numerous suggestions as a starting point for discussions to seek to elevate the level of safety and security for users of the development through incorporation

¹ FUL/2019/0434

² Paragraph 11d of the Framework

³ Technical Housing Standards – nationally described space standard

of suitable design mechanisms. Whilst the applicant did not choose to amend the scheme to detail such matters, it was open to the Council to consider imposing a condition to require agreement and implementation of security measures, including site management requirements, where necessary to make the development acceptable in planning terms.

12. In consideration of the measures advocated by LC, I have found that they would fall within the scope of the development without recourse to a further application for planning permission. They are therefore capable of being addressed through suitable planning condition. In the absence of justified reasons to the contrary, I conclude that the Council failed to apply the approach required at Paragraph 54 of the Framework.
13. In regard to consideration of the benefits of introducing a new use into a substantially vacant building, there is little within the Council's evidence to demonstrate that this balancing exercise took place. The applicant's Planning Statement highlighted several benefits of the scheme including economic, social and environmental gains. The Council's report and appeal statement are silent on these matters and therefore I find that the approach to decision-making outlined at Paragraph 38 of the Framework is absent.
14. Taking all of the above matters into consideration - the largely unsubstantiated refusal of planning permission, the failure to balance the scheme's benefits, apply the presumption in favour of sustainable development, and, refusing planning permission on a planning ground capable of being dealt with by conditions, I conclude that constitutes unreasonable behaviour contrary to the basic guidance in the Framework and the PPG. The appellant has subsequently been faced with the unnecessary expense of lodging the appeal.
15. For the above reasons an award of costs is justified.

Costs Order

16. 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 Burnley Borough Council shall pay to HPW Ltd. the costs of the appeal proceedings (only) described in the heading of this decision.
17. The applicant is now invited to submit to the 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.

R Hitchcock

INSPECTOR