
Costs Decision

Site visit made on 20 April 2021 by A J Sutton BA (Hons) DipTP MRTPI

by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2021

Costs application in relation to Appeal Ref: APP/V4630/W/21/3266355 17 - 18 Norton Road, Pelsall, WS3 4AY

- 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 Steve Hayward for a full award of costs against Walsall Metropolitan Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for demolition of existing public convenience and rear ground floor extensions to 17 and 18 Norton Road of the erection of 3 terraced houses on the site and the conversion of the existing offices to residential houses.
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Decision

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

Reasons for Recommendation

2. The Planning Practice Guidance (PPG) makes it clear that parties in planning appeals normally meet their own expenses. It sets out that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, in either a procedural or substantive way, which has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG advises an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Delay in providing information or other failure to adhere to deadlines may result in a procedural award of costs. Examples of behaviour which may give rise to substantive award of costs against councils include 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 objective analysis.¹
4. The Council submitted a statement of case for the appeal significantly beyond the extended deadline date agreed, however due to its late submission it was not accepted. The Council was not obliged to submit a statement, however in such circumstances it is important that the documents it relies on, in this case its officer report, is accurate and substantiates its case for refusal.
5. The Council now acknowledges that it made errors in relation to the assessment of the garden areas and in respect of the position of the proposed

¹ PPG Paragraph 049 Reference ID: 16-049-20140306

new building, and as such has belatedly removed reason for refusal 1 and part of reason 3. These matters were clearly shown on the submitted plans, and the failure by the Council to properly interpret those plans was unreasonable behaviour. The Council did not acknowledge these errors until its response to this application for costs. Therefore, the applicant had to address those parts of the Council's reasons for refusal in their appeal submissions and incurred wasted expense in doing so.

6. The officer report sets out reasoning in relation to each of the other reasons for refusal. There is no requirement for a decision-maker to agree with the advice of their consultees, however any differing view should be clearly explained. The assessment of the window to wall relationship is confusing and does not reach a conclusion, so it is unclear how it resulted in reason for refusal 2. In respect of reasons 4 and 5, the Council failed to have regard to the existing use of the area for parking, or to the measures proposed by the applicant to mitigate potential impacts. It also referred to screens that in the preceding paragraph it had said were not part of this proposal.
7. The Council therefore provided vague, generalised assertions about the proposal's impacts in relation to reasons 2, 4 and 5, which were unsupported by objective analysis. This was unreasonable behaviour. I have however reached similar conclusions to the Council in respect of reason 2, therefore the applicant's appeal submissions in these respects were necessary. Furthermore, the applicant's case in relation to reasons 4 and 5 was more detailed at appeal stage than in its application submissions, which contributed to my considering these aspects of the appeal to be acceptable, having regard to relevant material considerations. These were however matters of planning judgement, and I cannot be certain that the Council would have reached a different conclusion on them had it considered all relevant points. Therefore, I find no wasted or unnecessary expense was incurred in responding to these reasons for refusal.
8. The Council did however explain in its officer report how it concluded that the rear elevation represented poor design and that the ridge height was inappropriate. While I have reached a different conclusion on the first point, it was a matter of planning judgement and the Council's conclusion was not unreasonable given the importance attached to the character and appearance of designated heritage assets. In respect of reason 7 the stated dimensions were incorrect however the Council explained its reasons and I have reached a similar conclusion in relation to the impact on the living conditions of future occupiers. It therefore substantiated its case in relation to reasons 6 and 7.
9. However, most of the Council's reasons for refusal include the same set of policies, not all of which were relevant to the issues in that reason. These included policies identifying the appeal site as suitable for the use proposed², against which no conflict was identified; and policies which related to matters of infrastructure and landscape that were not raised by the Council³. In these respects, the Council's refusal reasons were also generalised and vague. This was also unreasonable behaviour. However, the applicant has only dealt with the allocation policy in their submissions and has correctly separated out the other policies in their reasoning. Therefore, they did not demonstrably incur

² Policy HOU1 of the Black Country Core Strategy (BCCS) and Policy SLC2 of the Sites Allocation Document

³ Policy ENV33 of the Unitary Development Plan -Landscape and Policy DEL1 of the BCCS - Infrastructure

unnecessary or wasted expense as a result of the Council's scattergun approach to including policies in its reasons.

10. Planning law requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise, therefore there is a balance to be applied. The applicant sets out various benefits of the scheme in their submissions, which could have been material considerations and public benefits, however the Council did not acknowledge any of these in its assessment. In the absence of a timely statement, it did not rectify this approach during the appeal.
11. There is no substantive evidence before me that any of the circumstances that would engage the presumption in favour of sustainable development set out in Framework paragraph 11 apply in this case. I have found that the proposal would not accord with the development plan, and no information on housing land supply was submitted. Nor was it demonstrated that the most important policies for determining the proposal were out of date. Nevertheless, the Council did not even apply the 'straight' balance required. Nor did it assess the degree of harm to the Conservation Area and apply the appropriate heritage balance as set out in the National Planning Policy Framework (the Framework). The failure to carry out the required balancing was unreasonable behaviour.
12. Notwithstanding this, I have found that, having applied both balances, the benefits of the proposal would not outweigh the harm. Therefore, while the Council has behaved unreasonably in these respects, its actions have not prevented or delayed a development which clearly should have been permitted.
13. Even if the erroneous reasons for refusal had been removed earlier, the Council indicates that the scheme would have been refused, so an appeal may still have been necessary. The applicant would still have had to set out the benefits of the scheme and consider the planning balance to make their case in any appeal. Therefore, the Council's unreasonable behaviour in respect of its statement of case, use of policies and lack of planning balance did not demonstrably result in unnecessary or wasted expense for the applicant.
14. Although a related matter, decisions to delay the submission of a prior approval application is a matter for the applicant, and did not need to await the outcome of the appeal. Nor, given the decision on the appeal, has it been demonstrated that the development of the site has been unreasonably delayed or that this has led to additional cost for the applicant.
15. Therefore, a partial award of costs is justified only in relation to the two erroneous reasons for refusal and the costs incurred by the applicant in dealing with these.

Recommendation and Conclusion

16. I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has been demonstrated in respect of the Council's failure to evidence its first, and part of its third reason for refusal. Therefore, I recommend that a partial award of costs is justified in these respects only.

Costs Order

17. 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 Walsall Metropolitan Borough Council shall pay to Mr Steve Hayward, the partial costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of responding to the entirety of the Council's first reason for refusal, and that part of the Council's third reason for refusal relating to the position of the proposed terrace of dwellings. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

A J Sutton

APPEAL PLANNING OFFICER

Inspector's Decision

18. I have considered all submitted evidence and the Appeal Planning Officer's report and on that basis I agree that a partial award of costs is justified, and I make that award in the terms set out above.

L McKay

INSPECTOR