



Costs Decision

Site visit made on 2 June 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

Costs application in relation to Appeal Ref: APP/K0425/W/21/3270049 Phoenix House, Desborough Park Road, High Wycombe HP12 3BQ

- 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 5G Communications Ltd for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for outline application with all matters reserved for a 2.5 storey, staff recreation building.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and so caused the costs applicant to incur unnecessary expense in the appeal process. This application claims unreasonable behaviour by the Council in terms of (i) approaching the planning application with a predetermined negative attitude, (ii) failing to co-operate or work proactively with the appellant during the processing of the planning application, (iii) forming a view on an incorrect basis, providing repetitive and irrelevant material, making vague and generalised assertions and failing to produce substantive evidence in respect of the parking and highway safety refusal reasons, and (iv) acting inconsistently and failing to substantiate its third refusal reason relating to the tree on the site.
3. The evidence before me in no way demonstrates that the Council's decision was made in the context of a predetermined negative view of the proposal. The Council officer's report explains why the scheme is considered acceptable in some respects but unacceptable in others. Overall, it concludes the proposal would be contrary to development plan policies and that, on balance, other considerations do not outweigh the concerns. The report demonstrates that the Council has assessed the proposal appropriately having regard to the merits of the scheme and all relevant factors, with no indication of predetermination.
4. The email correspondence provided shows that both the Council and applicant requested and agreed to extensions to the determination date for the planning application. Such extensions have allowed the submission and consideration of additional information. While a copy of the final officer report was not provided as requested, this is understandable given that the request was made before it had been signed off and completed. In any event, the Council officer advised of

the intention to refuse planning permission and explained the concerns in respect of parking and highway issues prior to formal determination. Also, the officer informed the applicant's agent of the Council's planning advice service and invited further discussions through that procedure. This is appropriate as the PPG states that one of the aims of the costs regime is to discourage unnecessary appeals by encouraging parties to consider a revised planning application.

5. It is clear from the submissions that the applicant has been frustrated by some of the delays in the determination of the application and what is described as the intransigence of Council officers. Nevertheless, the recorded correspondence illustrate that the Council has made reasonable efforts to work with the applicant in accordance with guidance in the National Planning Policy Framework (the Framework). The fact that the officers disagree with the applicant's case in some regards does not demonstrate a lack of co-operation. The Framework no longer advises that local planning authorities should look for solutions rather than problems and so there is no basis to award costs on these grounds, even if I found the Council had failed in this regard.
6. Concern is raised that the Council has considered the proposal on the basis that it would be used as offices and not as an ancillary recreation facility. However, its approach to assessing the adequacy of parking provision has been explained when having regard to the background to its parking standards and the potential for the proposal to allow more office space in Phoenix House. The Council's position in this regard is reasonable.
7. The Council's appeal submissions provide a response to the applicant's appeal statement. They seek to substantiate its parking and highway safety objections, for example, by referring to road traffic incidents in the locality and explaining specific concerns over roadside parking. Also, the comments provided on the proposed parking area at Park House Business Centre show that this has not been ignored. As such, I find the Council's statement adequately supports its case for refusal on parking and highway safety grounds. The concerns raised are explained in detail and so are not vague. As I have found the scheme would be unacceptable in terms of the effect on on-street parking and highway safety, it follows that the Council has not prevented development that clearly should have been allowed.
8. The Council's third refusal reason relates to the lack of information regarding the likely impact on the protected tree within the site. As the Council has already granted planning permission for development that allows its removal, it is inconsistent and unreasonable of the Council to require this information in respect of the appeal proposal. Moreover, it is unclear why it is necessary to ascertain the development's effect on the tree at the outline stage, as details of layout and landscaping are reserved for future consideration. The Council would have control at the reserved matters stage to ensure the proposal's acceptability in these regards. As such, the Council's objection in respect of the tree is unreasonable as it is not properly substantiated.
9. The third refusal reason has required the appellant to prepare a response on the tree matter. Therefore, I conclude that unreasonable behaviour resulting in unnecessary expense has been demonstrated. A partial award of costs is justified to cover the expense incurred by contesting the Council's objection regarding the impact of the proposal on the tree.

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 Buckinghamshire Council shall pay to 5G Communications Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's third refusal reason and objection concerning the impact of the development on the tree on the site; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

Jonathan Edwards

INSPECTOR