



Costs Decision

Hearing (Virtual) Held on 16 March 2021

Site visit made on 17 March 2021

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2021

Costs application in relation to Appeal Ref: APP/U4610/W/20/3247336 Land at Judds Lane, Coventry CV6 6AQ

- 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 Rowley Construction & Property Services Limited (c/o Cryfield Investments) for a full award of costs against Coventry City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the redevelopment of the site to provide a mixed-use scheme comprising a hotel along with a drive-thru restaurant, car parking spaces and associated vehicular access and landscaping.
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Decision

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

The submissions for Rowley Construction & Property Services Limited (c/o Cryfield Investments)

2. The appeal should never have been necessary if the Council had properly directed itself in law on the relevant facts and acted consistently in doing so by granting planning permission, subject to planning conditions, that will have made the development acceptable in planning terms.
3. Reason for refusal 1 and 2 cannot have been justified because the evidence provided with the application and also with this appeal shows that the development would have no more than a minimal impact on centres and no evidence was relied on to counter that material nor reasons given to disagree with it. In 2019, an Inspector permitted a hotel at Carpet Castle, Willenhall Lane, Coventry. Given this decision, the Council failed to apply consistency in interpreting Development Plan policies and the correct flexibility in the application of those policies.
4. Reason for refusal 3 is not justified, because if properly interpreted, the scope of Policy JE3 of the Coventry Local Plan (LP) 2017 cannot encompass the appeal site. The existing use does not fall within the definition of "employment land" under the development plan. Properly interpreted, the scope of LP Policy DE1 cannot encompass occupiers' living conditions of the development because, as was held in the Carpet Castle decision¹, LP Policy DE1 does not make explicit reference to them. Therefore, this policy cannot have formed a

¹ APP/U4610/W/19/3233806.

basis for Reason 3. Similarly, the scope of LP Policy EM8 cannot be interpreted to encompass development other than existing waste management facilities and cannot extend to development adjacent to such facilities. In particular, the Council is not entitled to rewrite LP Policy EM8. Matters arising from LP Policies EM7 and EM8 can be appropriately resolved by planning condition. Matters of air quality can be resolved by planning condition to accord with LP Policy EM7.

5. Planning permission for the Ricoh Arena was subject to a Green Travel Plan which details traffic management provisions for arena events and traffic management orders, including Judds Lane. Reason for refusal 4 cannot be justified because the law deems the Council to have knowledge of all its functions. It has acted irrationally in simultaneously being deemed to have knowledge of the circumstances that preclude traffic congestion, and ensure the safe passage of all highway users, on Judds Lane during arena event periods and then refusing planning permission under reason 4 due to congestion between pedestrians and vehicles during event periods.
6. Matters relating to Carpet Castle decision, the Arena Park obligation and green transport plan show a lack of co-operation by the Council with the applicant. The appeal decision was brought to the attention of the Council and it was imputed to be aware of the road traffic situation under the obligation and plan, with reference to the traffic management order.
7. Planning conditions could have been used to make the development acceptable in respect of living conditions and air quality, which would have been consistent with the Castle Carpet decision. The Council delayed permitting a planning permission for development that could properly and clearly have been, and should be, granted conditional planning permission. It refused planning permission on vague, generalised or inaccurate assertions about a proposal's impact, which was and remains unsupported by any objective analysis. The Council, accordingly, has acted unreasonably in refusing planning permission.
8. The following additional points were made orally at the hearing. There remains very little cooperation by the Council and little attempt has been made to work with applicant within the Statement of Common Ground. The Council has failed to use the current undetermined duplicate application to progress matters. Time has been wasted at the hearing on issues relating to odour of surrounding uses in relation to whether the proposed development is incompatible. No sequential assessment statement has been produced by the Council. The evidence in respect of reasons for refusal relating to 1 and 2 (sequential assessment and centre impact) has not significantly changed with the appeal statements. The applicant has done everything possible to address the Council's objections and concerns. If there are outstanding issues, these have not been made clear to the applicant.

The response by Coventry City Council

9. Extensive pre application advice was given before the application was submitted and it was made clear what matters would need to be addressed in the application submission. The applicant chose not to take the advice of officers but instead submitted inadequate information to address the concerns outlined at the pre application stage.

10. The applicant is now relying on reports and information that has been gathered and submitted since the decision was taken on the application. Not only were they not submitted for consideration during the planning application process but they are also unacceptable in addressing concerns as part of the subsequent planning application that is currently under consideration.
11. The applicant either does not understand or is deliberately misinterpreting LP Policies JE3 and EM8 which clearly seek to protect existing employment uses and the existing waste management facilities. The Council's statement clearly addresses the further points made by the applicant and shows that the Council has had due regard to the Carpet Castle appeal decision. These matters have been clearly and comprehensively addressed in the Council's statement and were expanded on at the hearing. It is accepted that conditions should be considered where appropriate and if the reports had been adequate to address the Council's concerns then it would have taken this approach.
12. However, conditions do not sufficiently demonstrate that concerns could be addressed to overcome the Council's reasons for refusal. The Council does not consider that it has behaved unreasonably or that it has acted in any way that would cause the applicant any unnecessary costs or expense. The documentation submitted with the application was largely inadequate and fell significantly short of what would be expected to enable the local planning authority to form different views to those set out in their decision notice. We respectfully request that the Inspector takes this information into consideration and rejects the claim for costs.
13. The following additional points were made orally. On the second planning application, the information requirements are close to being resolved. The applicant had chosen to submit the minimum amount of information at the application stage. To progress matters, there are costs for both parties and the applicant could have withdrawn the appeal and then taken that second application proposal to appeal.

Reasons

14. The Planning Practice Guidance (the Guidance) 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.
15. For the sequential test (ST) search area, there was a dispute as to whether it should be localised or broader to include the city centre. The Council has distinguished the Carpet Castle decision from that before me, produced evidence to dispute that the drive-thru restaurant and hotel are intrinsically linked and that the localised need for the restaurant is based on commercial considerations. It has indicated a changing emphasis of the proposal's need during its consideration, especially since the Carpet Castle decision.
16. This changing emphasis took place before its decision and it has not addressed the important argument of the applicant's based on the needs of visitors to the Ricoh Arena and additionally the transient needs of people using the A444 and motorway corridor. No objective analysis has taken place to support the Council's view that localised need should be discounted. This is a serious omission, especially given the support given to a hotel near to the Ricoh Arena by LP Policies JE1 and JE6.

17. Nevertheless, much work was put into a wider ranging ST search area to inform the initial proposal and the onus is upon the applicant to draw up a list of sites in consultation with the Council based on the Guidance. There is no evidence that significant additional work has been necessary since the application statement on sequential and impact matters and indeed, the applicant has confirmed that the appeal statements were little different to those at the application stage on this issue. Given the nature of the issue and planning policy, it was inevitable that there would be discussion of the issue at the hearing. Most of that discussion focussed on sites around in and around Arena Park Major District Centre, which was clearly necessary based on the main decision. Therefore, it has not been demonstrated that any significant additional work has been incurred during the appeal process due to unreasonable behaviour.
18. Similarly, the Council did not substantiate its case that the development's impact on the city centre and Major District Centres should be considered. However, the applicant's impact test (IT) assessment focusses on APMDC which was always a necessity given the location of the proposal, and therefore, any significant additional work incurred during the appeal process has not been shown.
19. LP Policies DE1 and EM7 do not support the Council's reason of refusal 3, and there has been much debate about whether LP Policies JE3 and EM8 are relevant. However, irrespective of whether the later policies were engaged, the evidence produced by the Council on noise, raised legitimate concerns as to whether the proposed uses, especially the hotel, could co-exist satisfactorily with the neighbouring industrial uses. In this regard, the Council's raised detailed concerns about the scope of noise surveys and mitigation, and the importance of the industrial uses. Therefore, the Council has substantiated its case in relation to reason for refusal 3 and the appeal was necessary.
20. Turning to the highway reason for refusal 4, there is a road traffic order closing Judds Lane and neighbouring roads, and the priority of the traffic lights at the Rowley's Green Lane Roundabout can be controlled when major events take place. Whilst this is a legitimate issue to consider, the Council has raised objection on highway safety and traffic flow grounds without considering this evidence of which in any case, as highway authority, it should be aware of. Accordingly, it has produced vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis in relation to this reason for refusal 4.
21. Within the Council's appeal statement on highways, many of the issues relate to a summary of the dialogue with the applicant and matters that have been dealt with through amendment or could be dealt with through planning conditions.
22. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated in respect of reason for refusal 4 and that a partial award of costs is justified. Those costs relate to the applicant's preparation and presentation of highway evidence for this appeal.

Costs Order

23. 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 Coventry City Council shall pay to Rowley Construction & Property Services Limited (c/o Cryfield Investments), the costs of the appeal proceedings described in the heading of this decision; limited to those relating to the reason for refusal 4 on highway matters, such costs to be assessed in the Senior Courts Costs Office if not agreed.
24. 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.

Jonathon Parsons

INSPECTOR