The Planning Inspectorate

Costs Decision

Inquiry (Virtual) held on 15 to 18 June 2021
Site visit made on 21 June 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2021

Costs application in relation to Appeal Ref: APP/E3715/W/21/3268629
Land North of Coventry Road, Long Lawford, CV23 9BT

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr David Joseph (Bloor Homes Limited) for a full award of costs against Rugby Borough Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for development originally described as '*development of 153 residential dwellings with associated landscaping, public open space and infrastructure, including an amended junction between the A428 Coventry Road and Back Lane*'.

Decision

1. The application for an award of costs is refused.

The Submissions

2. The costs application and the response from the Council were submitted in writing. A reply to the Council's points was provided by the applicant orally at the Inquiry.

Reasons

3. The 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.

4. After the appeal had started and at the Case Management Conference the Council identified that it would not be defending its first and third refusal reasons, which relate to highway safety and affordable housing matters. However, the applicant argues that in the lead up to the Inquiry, and at the event, the Council nevertheless continued to object to the proposal based on those reasons. Moreover, it is argued that those reasons were unsubstantiated. It is also claimed that the Council's second refusal reason, which relates to concerns arising from the proposed highway arrangement on the living conditions of the occupiers of Lelleford House, was unsubstantiated too.

5. The applicant therefore argues that they have been put to unnecessary and wasted expense in having to make a case in respect of all the Council's refusal reasons. Additionally, it is put forward that the Council did not agree to a Statement of Common Ground (SoCG) in a timely manner.

6. The PPG explains that the costs regime aims to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through avoidable delay.

7. The PPG also sets out that local planning authorities are at risk of an award of costs if they unreasonably refuse planning applications. Specific examples of this include preventing or delaying development which should clearly be permitted; failing to produce evidence to substantiate each reason for refusal on appeal; and making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. In addition, failing to agree a SoCG in a timely manner and the withdrawal of any refusal reason are cited as examples of unreasonable behaviour from a procedural perspective.

8. It is contested by the Council that a SoCG was not agreed in a timely manner. Whilst the initial deadlines set by the Planning Inspectorate for the submission of both the original and updated SoCG were not met, conclusive evidence of the Council having acted unreasonably in respect of this specific matter has not been provided.

9. The Council's living conditions objection derives from a contention that the proposed highway arrangement would be complex for users of the Lelleford House access and that those travelling to and from the property would find the arrangement difficult to navigate and feel unsafe and be fearful and anxious as a result.

10. The Council's argument that the proposed highway arrangement would be complex was supported by an assessment of the layouts of, and traffic movements for, the existing and proposed arrangements. A link between ease and difficulty of access to properties and effects on living conditions was clearly established. A relevant development management policy was relied upon to justify the Council's position. Whilst the Highway Authority raised no objection to the proposal and the Council did not contend that there were issues with the proposed arrangement from a technical perspective, the Council nevertheless had a rational foundation for its views. Additionally, it was reasonable for the Council to consider alternatives to the scheme having found that the proposal was harmful and conflicted with policy.

11. I find that the Council adequately substantiated its second refusal reason. As such, there has been no unreasonable behaviour in respect of this matter.

12. The proof of evidence by the Council's witness refers to conflicts with planning policies relating to its first and third refusal reasons. The SoCG also indicates that conflict with policies relating to those reasons remained areas of disagreement. Furthermore, the Council's witness had to clarify in examination that only the second refusal reason was sought to be defended. Having regard to the Council's earlier confirmation that it would not be defending its first and third refusal reasons, it is evident that it did not present a clear or consistent position regarding its case.

13. No changes in circumstances between the application being refused and the Council initially stating that it did not seek to defend its first and third refusal reasons have been presented. Moreover, the Council's witness confirmed that

its appeal evidence should not be interpreted as evidence to substantiate its undefended refusal reasons.

14. I take the view that, irrespective of any uncertainties that the applicant may have had regarding the Council's position during the appeal process, the Council has not adequately substantiated its first and third refusal reasons. I thus conclude that it did not act reasonably in refusing the application for those reasons.

15. However, the Rule 6 Party (R6 Party) had objections to the proposal that related to all 3 refusal reasons. The applicant contends that they would have spent less time and resources on their case if it had been clear that only the R6 Party had highway safety and affordable housing objections to the scheme. However, the R6 Party produced witnesses and detailed written and oral evidence to support its objections relating to all the refusal reasons. In addition, I cannot be sure that the R6 Party's case would have been different if the Council had only refused the application due to the alleged harm to living conditions.

16. It was necessary for the applicant to provide compelling evidence relating to the first and third refusal reasons to address the R6 Party's objections. There can be no certainty that the outcome of the appeal would have been the same if the applicant had expended less time and resources on its case. The applicant has therefore not been put to unnecessary or wasted expense as a result.

17. I find that the Council's case in respect of the second refusal reason was reasonable and thus the applicant has not been put to unnecessary or wasted expense in relation to it. Furthermore, the applicant has not been put to unnecessary or wasted expense in relation to matters associated with the first and third refusal reasons due to the case that the R6 Party pursued.

Conclusion

18. Unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated. The application for an award of costs is refused.

Mark Philpott

INSPECTOR