

Costs Decision

Inquiry Held on 1-5 and 6 November 2021

Site visit made on 3 November 2021

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th April 2022

Costs application in relation to Appeal Ref: APP/P0240/W/21/3275720 137-139 High Street and Land to the West of High Street, Arlesey, SG15 6SX

- 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 J S Bloor (Northampton) Limited for a partial award of costs against Central Bedfordshire District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of 137 and 139 High Street, and the erection of 112 dwellings (Use Class C3), new vehicular and pedestrian access off High Street, public open space, sustainable drainage systems and ancillary infrastructure.
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Decision

1. The application for a partial award of costs is refused.

The submissions for J S Bloor (Northampton) Limited

2. The applicant has made a partial application for costs based on the reliance by the Council on the incorrect plans, late attempts to produce further plans and the position on Custom Build Homes. In addition the applicant considers that the Council's evidence goes beyond the reasons for refusal. The nub of the applicant's concerns being there has unreasonable behaviour on the part of the Council on these points.

The response by Central Bedfordshire District Council

3. The Council consider that the costs application is without merit. It submits that the reference to incorrect plans was an honest mistake and point out the number of additional amended plans during the course of the appeal did not assist. Nonetheless, this does not amount to unreasonable behaviour. The alleged introduction of a new reason is also unfounded. It is also not justified to say that evidence on the delivery of the relief road goes beyond what is set out in the officer report, decision notice and statement of case.

Reasons

4. There is no dispute that amendments were submitted as part of the appeal. As the Council point out Mr Hughes' proof is clearly labelled with references to plans where extracts are included. This was clear and available to the applicants team. In accepting the amended drawings I applied my judgement, having carefully considered all the information before me and the Wheatcroft principles. This position was known to the parties following the case management conference (CMC). The Council has sought to engage with the

applicant's team to narrow areas of difference and produce statements of common ground for the inquiry as a whole. The applicant could have raised these points on the plans with a view to clarifying these matters. In addition to this Mr Hughes oral evidence at the round table session was clear in articulating the Council's concerns with the scheme in relation to character and appearance. Overall, I do not consider that the Council have behaved unreasonably on this point.

5. The second issue raised relates to the Council's evidence regarding reason for refusal one. Specifically the effects of the scheme on 135 and 141 High Street and the absence of a technical noise objection. The fact that the owners of these dwellings have not objected does not in itself mean that this issue cannot be considered in assessment of the scheme.
6. Reason for refusal one focuses on the link between the provision of the relief road in full and the traffic generated on the High Street that would use the entirely new access which was intended as a secondary one. This marks a change in position from the masterplan. The officer report¹ does make reference to the effects on the amenities of residents living on or close to the High Street. This is then addressed in the Council's statement of case² and then within Mr Hughes proof of evidence³. Further clarification on this point from the Council was raised at the CMC to allow the inquiry timetable to be established. Overall, positions on this issue were known from outset of the appeal process and the Council has supported its case on this matter at the inquiry. I appreciate that there was no technical submission from the Council but the effects were clearly explained by Mr Hughes. As such I do consider that there was unreasonable behaviour on this point or unnecessary expense for the applicant.
7. Following the adoption of the Central Bedfordshire Local Plan there was a change to the Council's housing policies. Specifically policy H6 seeks the provision of 10% of the sites dwelling capacity as serviced plots for custom build homes. The applicant engaged with the Council regarding the provision of a planning obligation as part of preparation for the inquiry. The applicant has provided a clear chronology regarding the communications with the Council's legal team.
8. The Council's legal team and applicant's team clearly had an extensive exchange on the content of the legal agreement. However, at the inquiry it was evident that the communications regarding the legal agreement were not necessarily communicated with the Council's witnesses.
9. The matter of the need to comply with H6 and other housing policies was raised in Mr Hughes' proof of evidence. The planning obligation seeks to address that point. The amended plans did not specifically deal with it. As such the applicant proposed the planning obligation to the inquiry to address the policy requirement of H6 identified in the Council's evidence. I understand that this obligation was put together based on an approach previously adopted by the Council and agreed with its legal team. I can understand that the applicant is frustrated that this did not then align with the evidence presented to the inquiry. However, this presupposes that the Council's witness saw the

¹ Page 19

² CD10.2

³ paras 5.59-5.78

provision of the obligation as a solution to address this issue. As explained to me at the round table sessions and in the Council's closing submissions Mr Hughes remained of the view that whilst the obligation could lead to the correct number of units to comply with H6 that there was a tension between the approved plans and this requirement. Overall, there was a new policy position since determination of the application which was raised in Mr Hughes' proof and responded to by the applicant in the form of the planning obligation. Therefore, even though I recognise that there is a tension between the Council's legal teams advice and the inquiry evidence of Mr Hughes, I am satisfied that this was justified by the Council's team at the inquiry. As such on this matter I do not consider that unreasonable behaviour has taken place.

10. The applicant is concerned that the Council's case regarding the delivery of the relief road went beyond that expressed in policy MA8 or in the Arlesey Cross Masterplan (ACMP). In particular concern is expressed regarding the proof of evidence of Ms Farrier⁴. I understand that Ms Farrier acknowledged that there was no legal or policy justification for the appellant to necessarily fulfil the barriers of delivery identified in her proof. Nevertheless, these points do provide relevant and contextual information regarding the overall provision of the relief road. In particular that these elements make clear the Council's position regarding how it thinks delivery should take place. In this regard I consider that this information is relevant to the reason for refusal.
11. There is no dispute that a reference to early delivery was within the Core Strategy and this has been replaced by the Council's Local Plan 2021. The overall issue about the delivery of the relief road was raised within the officer report and then in the reason for refusal of the scheme. As such it was a known matter. It was also clear from an early stage in the appeal that this would be an area of dispute at the inquiry. As such I cannot see how the drafting of the statement of common ground or the review of other consents referenced by the Council would have been wasted time over and above normal inquiry preparation that would have led to unnecessary or wasted expense as the applicant suggests. Ultimately this point is a matter of judgement and the Council have explained their position clearly.
12. The evidence of Ms Farrier raises the width of the carriageway of the site access point. In her evidence there is no suggestion that this is done as a highways objection or matter of highway safety. As the applicant points out the Highway Authority do not object on this point. Nevertheless, it seems to me that this paragraph of the proof, as the Council's response sets out, simply seeks to draw attention to the difference between the relief road specification and that of the access point from the High Street. On this point I do not consider that is an argument unsupported by evidence nor is it unreasonable to draw attention to this contextual point.
13. The applicant is concerned that the Council has added a litany of additional reasons in conflict with the Development Management Procedure Order⁵. I have considered this point carefully with reference to the Council's decision notice. The notice itself is clear and sets out reasons for refusal in full. All

⁴ CD15.2

⁵ article 35(1)(b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision;

policies are referenced and where this has changed since the decision was made this has been clarified by the Council.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary expense as described in the PPG, has not been demonstrated. For the reasons given above I refuse the applications for a partial award of costs.

D J Board

INSPECTOR