



Costs Decision

Site visit made on 8 March 2022

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2022

Costs application in relation to Appeal Ref: APP/U4610/W/21/3283038 Telephone Repeater Station, Fletchamstead Highway, Coventry CV4 7BB

- 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 Parminder Bal for a full award of costs against Coventry City Council.
 - The appeal was against the refusal of planning permission for the change of use and refurbishment of a former BT repeater station to provide residential and office ('Live-work') accommodation.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal. Costs applications may relate to events, if not expenses incurred, before an appeal was brought.
3. The applicant's case for an award of costs is on substantive grounds, including that the Council made vague, generalised or inaccurate assertions about the proposal's impact, unsupported by objective analysis. The applicant also considers that the Council's decision prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The Council's first reason for refusal was in relation to concerns over highway safety. The applicant has sought to demonstrate that the existing building has lawfully been operating in a Class E use. However, as reasoned in the associated appeal, that position does not provide compelling justification for allowing the scheme. For the reasons set out in the appeal decision I too have concerns regarding highway safety.
5. Therefore, I cannot find that the Council was unreasonable in reaching the view that the proposal would likely increase vehicular trips to and from the site. I have also concluded that the proposal would result in unacceptable living conditions for its future occupants with respect to noise. As such, although arrived at independently, my decision aligns with the Council's position in relation to their first and third reasons for refusal.

6. The Council's second refusal reason was in respect of the impact of the proposal on the Burnsall Road Local Wildlife Site and Canley Brook Local Geological Site. This stems from the applicant's original proposal which incorporated tree removal. During the Council's determination of the application the applicant amended the proposal to retain all trees within the site. In my view the Council's continued objection to the proposal on the basis of the implications of tree loss was therefore unsubstantiated as it did not expressly address that change in the proposal (supported by updated information from the applicant's ecology and arboricultural consultants).
7. The Council's failure to take into account revisions of the proposal to retain trees did not in itself force the applicant's hand into appealing (given that there were other issues in dispute). And, it appears to me, that issue is comparatively minor relative to others. Nevertheless, the applicant would inevitably have spent some time and expense defending their position in respect of trees at appeal unnecessarily.

Conclusion

8. For the reasons set out above I conclude that overall the Council's decision was substantiated and did not prevent or delay development that should clearly have been permitted. However, the Council's reasoning in respect of their second refusal reason, addressing impacts on the Burnsall Road Local Wildlife Site and Canley Brook Local Geological Site, was unsubstantiated and therefore represents unreasonable behaviour. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting only that part of the Council's objection to the scheme is justified.

Costs Order

9. 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 Mr Parminder Bal, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's second reason for refusal relating to impacts on Burnsall Road Local Wildlife Site and Canley Brook Local Geological Site; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. 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.

Rachel Hall

INSPECTOR