

Costs Decision

Site visit made on 29 April 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2022

Costs application in relation to Appeal Ref: APP/J3015/W/21/3285668 Central College Nottingham, High Road, Chilwell NG9 4AH

- 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 Arran Bailey (High Road Developments Ltd) for a full award of costs against Broxtowe Borough Council.
 - The appeal was against the refusal of planning permission for conversion of existing college building to student accommodation comprising 162 bedrooms including external alterations.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. An application may be made on procedural grounds, relating to the appeal process, or substantive grounds relating to the planning merits of the appeal.
3. The PPG adds that local planning authorities are at risk of an award of costs if they make vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and which prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations
4. The applicant's case is essentially that the Council, through the actions of its planning committee in refusing the application contrary to the recommendation of officers, demonstrated unreasonable behaviour as the decision was reached without proper reference to the technical evidence advanced as part of the application to address issues of noise, disturbance and parking that formed the reason for refusal. Moreover, it is argued that the planning committee failed to identify alternative evidence to substantiate its reason for refusal, a position the Council has persisted with at appeal.
5. The Council has not responded to the application for an award of costs.
6. The fact that the planning committee did not agree with the officer recommendation is not itself justification for an award of costs. However, the

reasons for doing so need to stand up to scrutiny and be supported by robust, objective evidence.

7. The application was put to the planning committee twice. At the first meeting in July 2021, the minutes indicate the main concerns related to on-site parking provision and potential access from surrounding streets. The application was deferred to enable the applicant to address these matters.
8. The minutes of the second meeting in September 2021 are brief, indicating that members again debated the lack of parking and potential congestion on neighbouring streets, noise during building works and potential disturbance from students once the building was occupied. Concerns over noise and overlooking were raised, on the basis of the scale of the development and its proximity to neighbouring dwellings. Ultimately, these minutes provide limited detail as to the analysis carried out by members at the meeting in determining to refuse the application.
9. At the appeal stage, the Council has made the case that the scale of development would generate unacceptable levels of noise, disturbance and overlooking for nearby residents. It based its position on the expected density of development and number of comings and goings that would occur from residents, visitors and deliveries. However, whereas the officer report to the committee at application stage acknowledged noise and disturbance arising from past use of the site as a college at a significantly greater density and the lack of objection from the environmental health department, the Council's case at appeal fails to weigh these considerations against the fears of the Committee and local residents that were based largely on assumptions and generalisations about student behaviour that were not supported by specific evidence.
10. Ultimately, on this issue, I consider the Council's position was based on perceived and ill-defined impacts resulting from the development that were not supported by the evidence before me.
11. In terms of parking, the Council's case is predicated on there being too few parking spaces provided on site, both for occupants and deliveries/servicing. However, the Council has provided no firm evidence to substantiate this position, which ran contrary to the recommendation of officers and the local highway authority, who had indicated that the Council's own parking standards required only 15 spaces to be provided.
12. Moreover, the Council made no reference to the technical evidence of the applicant showing a substantial fall in predicted trips by car to and from the development compared to its previous use as a college. Nor did the Council acknowledge the predicted modal split which would be heavily in favour of public transport, walking and cycling. Added to this, the Council made no reference to the mitigation measures put forward through the planning obligation to further discourage car ownership by residents.
13. In short, I found the evidence provided by the applicant to be robust and, taken in the round, capable of addressing the concerns raised. However, the Council failed to acknowledge this mitigation, its own parking standards or the considered advice of the local highway authority in respect of the applicant's technical evidence, which it failed to rebut with any competing technical evidence of its own.

14. Furthermore, there is no evidence, either in the minutes of the committee meeting or the Council's appeal statement, of the Council undertaking a planning balance in respect of the proposal, despite both of the committee reports indicating there would be benefits to the proposal, as did the applicant's evidence. As such, it is unclear that the Council, either at application stage or appeal stage, properly weighed potential benefits of the proposal against perceived harms in reaching its decision.
15. Overall, therefore, I find that the Council has failed to take into account all relevant material considerations, and instead based its decision on vague, inaccurate assertions not supported by objective evidence. Consequently, the Council has failed to substantiate its reason for refusal. This amounts to unreasonable behaviour as set out in the PPG and it follows that the applicant has been put to the unnecessary expense of making the appeal.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

17. 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 Broxtowe Borough Council shall pay to Mr Arran Bailey (High Road Developments Ltd) the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. 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.

K. Savage

INSPECTOR