



Costs Decision

Site visit made on 30 June 2022

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

Costs application in relation to Appeal Ref: APP/B1930/W/21/3278854 32 Cambridge Road, St Albans, AL1 5LQ

- 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 Steve Murphy (J Murphy Developments) for a full award of costs against St Albans City & District Council.
 - The appeal was against the refusal of planning permission for the erection of a pair of semi-detached dwellings with attached garages fronting Cambridge Road and a detached new dwelling with attached garage fronting College Road with associated parking and access.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where:
 - a party has behaved unreasonably; and
 - the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG clarifies that unreasonable behaviour may either be procedural or substantive. Although an application for costs may relate to events before the appeal, the PPG states that costs unrelated to the appeal are not eligible for an award.
4. The application for costs by the appellant is based on procedural and substantive grounds in that it alleges the Council acted unreasonably in; - (1) not following the correct procedure at Committee; and (2) preventing or delaying development that should clearly be permitted, in a manner inconsistent with other planning application decisions.
5. In accordance with section 38(6) of the 2004 Act¹ and section 70(2) of the 1990 Act, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The starting point of decision-making is therefore plan-led.

¹ Planning and Compulsory Purchase Act 2004

6. The PPG states that where a local planning authority has exercised their duty to determine planning applications in a reasonable manner, it should not be liable for an award of costs. It also states that where a planning application has been refused for a proposal that is not in accordance with development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.

Ground 1: Not following the correct procedure at Committee

7. The Council's reasons for refusal clearly explain why the proposal was refused and the local & national policy basis for this. Although I believe the reasons should have been more precise in referring to the actual paragraph numbers of the Framework, I am not of the view that this would have incurred any additional work over and above that which the appellant would need to have routinely carried out in the course of presenting their own appeal case in this instance.
8. I agree with the appellant that there is no detailed written evidence setting out how the Committee reached its decision, but this is not unusual in cases where an officer recommendation is overturned. In such instances, if a decision has been reached on weak grounds or following an incorrect evaluation, the applicant has the option to appeal and have it reviewed. In this instance, I am satisfied that even after having applied the tilted balance and assessed the benefits of the scheme in the appeal decision (which the appellant asserts did not take place at Committee), that a refusal was warranted.
9. The appellant states that at no stage during the discussion at Committee did officers explain the implications of overturning the recommendation, including an assessment of the likely appeal outcome or the chance of a successful award of costs. However, planning decisions are often finely balanced and Councillors are not obliged to follow the recommendations of officers on the provision that they give sound and justifiable reasons for doing so. Officers are aware of this and there is no evidence before me demonstrating that Members deliberately denied them the opportunity to explain the implications of the Committee's impending decision. This implies to me that although it was contrary to their advice, officers did not consider the Committee's decision to be unreasonable or at risk from costs.
10. In view of the above, I do not agree with the appellant that the Council did not follow correct procedures and as a consequence, the application for costs on this procedural ground fails.

Ground 2: Preventing or delaying development that should clearly be permitted, in a manner inconsistent with other planning application decisions

11. In terms of the parking issue, whilst I did not agree with the Council that the total number of parking spaces proposed was unsatisfactory, I did however conclude that they were of an insufficient size for them to be used easily, conveniently and safely.
12. The appellant has referred to other schemes that were allowed by the Council with fewer parking spaces. However, as explained in the appeal report, I would not consider it appropriate for such exceptions to justify further under-

provision as each incremental addition to the housing stock will have a consequential impact on the level of parking stress once it has been constructed. Each new residential proposal that subsequently comes forward must therefore be treated on the basis of the parking conditions that exist at the time it is submitted.

13. In view of the above, I do not consider it unreasonable of the Council to have refused the scheme on the substantive grounds of inadequate parking provision.
14. However, it will also be seen from the appeal decision that I disagree with the Council on the grounds it refused the application relating to amenity space. Irrespective of the other schemes referred to by the appellant, it seems to me that the Council focused solely on the numerical requirements of the Design Advice Leaflet², with no consideration given to the exceptions in Policy 70 of the Local Plan³ relating to local residential character and the proximity of public open space nearby, which the appellant had addressed in their submission.
15. In view of this, I consider it unreasonable of the Council to have refused the scheme on the substantive grounds of unsatisfactory amenity space.

Conclusion

16. In view of the above, I find that unreasonable behaviour by the Council resulting in unnecessary and wasted expense has been demonstrated. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting the first reason for refusal 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 St Albans City & District Council shall pay to Mr Steve Murphy (J Murphy Developments), the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first reason for refusal.
18. The applicant is now invited to submit to St Albans City & District Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Robert Fallon

INSPECTOR

² Design Advice Leaflet No 1 (November 1998), Design and Layout of New Housing, St Albans City and District.

³ St Albans District Plan, City and District of St Albans District Local Plan Review, Adopted 30 November 1994, Written Statement.