



Costs Decision

Inquiry held on 12-15 and 18-20 July 2022

Site visit made on 21 July 2022

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Costs application in relation to Appeal Ref: APP/C1950/W/22/3294860 BioPark, Broadwater Road, Welwyn Garden City, Hertfordshire, AL7 3AX

- 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 HG Group for a full award of costs against Welwyn Hatfield Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for demolition of existing buildings and construction of 289 residential units (Use Class C3) and community hub (Use Class E/F.2), with public realm and open space, landscaping, access, associated car and cycle parking, refuse and recycling storage and supporting infrastructure.
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Decision

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

The submissions for HG Group

2. The application was made in writing during the inquiry and is not repeated in this decision. In summary, it says that the Council's planning evidence failed properly to address the central tests for deciding the appeal, specifically the relevant balances under section 38(6) of the Planning and Compulsory Purchase Act 2004, and paragraph 11(d)(ii) of the National Planning Policy Framework (the Framework).

The response by Welwyn Hatfield Borough Council

3. The Council's response to the costs application was made in writing. In summary, it says that all relevant considerations were set out in the Council's Committee Report, notwithstanding that members of the Council ultimately arrived at a different overall conclusion to that of officers. Members were entitled to exercise their judgement and refuse planning permission. The Council's evidence sought to concentrate on the areas of dispute between the parties and the main issues in the appeal. The Council's planning evidence/witness substantiated the reasons for refusal and did not cause the appeal or lead to the expense incurred by the appellant.

Reasons

4. The Planning Practice Guidance 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.

5. Members were informed of all relevant considerations by officers in a comprehensive Committee Report before deciding to refuse planning permission. They were entitled to do so, having exercised their own judgement. Reasons for refusal were clearly set out in the formal decision.
6. It is, however, important that any reasons given can be substantiated at appeal. In this case, professional witnesses were called to deal with the issues outstanding between the Council and the appellant. Evidence was produced and the appellant had the opportunity to test it during the inquiry.
7. The planning evidence and indeed, the Council's entire case, was very brief. There is nothing wrong with evidence being concise, but it should address all the pertinent issues so that reasons are properly substantiated. The Council's case was far from convincing, but it did seek to deal with the main issues in dispute and explain where the Council's concerns arose.
8. The planning evidence should be considered in the context of more detailed background information before the inquiry, including the Committee Report and Statement of Case. Bearing all of this in mind, it seems to me that the Council would have had wider issues in mind in concluding that the adverse impacts it anticipated should lead to the refusal of planning permission.
9. The Council's planning evidence states that these adverse impacts would significantly and demonstrably outweigh the benefits, which indicates some regard to the appropriate balancing exercise contained within the Framework. Furthermore, in response to my questions, the Council's planning witness confirmed his view that the outcome of the balancing exercise remained the same by the time that he gave evidence at the inquiry, notwithstanding acceptance that the development was largely in accordance with the spatial strategy.
10. Overall, the inquiry was necessary as a result of members decision to refuse planning permission. The reasons for refusal were adequately addressed and I do not consider it likely that the Council's opposition to the case would have changed if the planning witness had set out the relevant balancing exercises more explicitly in writing.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Michael Boniface

INSPECTOR