



Costs Decision

Inquiry held on 5 – 8 July 2022

Site visits made on 5, 6 and 7 July 2022

by H Porter BA(Hons) MSc Dip IHBC

an Inspector appointed by the Secretary of State

Decision date: 28th September 2022

Appeal Ref: APP/Y1110/W/22/3292721

Land off Spruce Close, Exeter, EX4 9DR

- 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 Salter Property Investments Ltd for a full award of costs against Exeter City Council
 - The Inquiry was in connection with an appeal against the refusal of planning permission for up to 93 residential dwellings (approval sought for details of access only, with scale, layout, appearance and landscaping all reserved for future consideration)
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Decision

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

Preliminary Matter

2. Salter Property Investments Ltd (the applicant) made an application for a full award of costs against Exeter City Council (the Council) in writing before the Inquiry closed. The Council provided a written rebuttal with its closings, to which the applicant did not wish to make further representations.

Reasons

3. The Planning Practice Guidance (PPG) 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.
4. The applicant submits that the Council has demonstrated unreasonable behaviour in substantive terms by pursuing an illogical and inconsistent policy objection to the proposed development, as well as departing from points of agreement in a signed Statement of Common Ground (SoCG).
5. The starting point of decision-making is the development plan. It is not unreasonable for the Council's Planning Committee to have resolved to overturn its officer's recommendation. In so doing, the Council's decision notice cites conflict with the development plan's 'spatial approach' and Saved Policy H1¹ and Policy CP16², through development on a site that lies in an area identified for protection.
6. Policy H1 establishes a development hierarchy that puts greenfield land at the bottom of its search sequence. The policy does not apply a blanket restriction on development proposals that do not accord with criteria in that sequence.

¹ from the Exeter Local Plan First Review, 2005 (Policy H1)

² from the Exeter City Council Core Strategy, 2012 (Policy CP16)

Nor does it require an applicant undertake a sequential test, as the Council agreed. Yet, the Council's decision notice applies Policy H1 in a binary way, identifying the appeal site's location as offering an in-principle objection to development. The case subsequently put by the Council underscored this, stating that the Planning Committee resolved to go against its officer recommendation as the site is 'subject to... policies that protect it from development' and that the 'location of the appeal application does not meet the Policy H1 sequential approach to development'³.

7. Amongst examples of unreasonable behaviour listed in the PPG is giving vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. As the Inquiry unfolded, I found the Council's statements, agreed positions within the SoCGs and subsequent positions stated under cross-examination, to be somewhat muddled. The substance of the case it brought to the Inquiry in respect of Policy H1 was unclear and therefore, in continuing to pursue its objection in respect of Policy H1 as it did, I find the Council's behaviour was unreasonable.
8. It will be seen from my appeal decision that I decided to allow the appeal. Even so, I do not consider the proposal was one that should have clearly been allowed. Rather, my decision was made after exercising planning judgement and weighing all matters in the balance. The Exeter Greenspace Group as Rule 6 Party played a significant role in the Inquiry and offered extensive evidence that dealt with, among other matters, the site's sustainability (a matter not in dispute between the Council and the applicant). Having considered the sustainability of the site and whether it would be well served by public transport, it will be seen from my appeal decision that I did not find conflict with Policy H1. Although the costs application is levelled at the Council's behaviour, the role of the Rule 6 in the Inquiry means there was a case the applicant still had to answer.
9. Policy CP16 does not preclude development sites within areas including Exeter's 'hills to the north and north west', wholesale, or as a matter of principle, but rather it seeks to protect the character and local distinctiveness of those areas. Notwithstanding that the Council did not bring a case specifically in respect of landscape harm, it maintained and argued its case on the proposal's impact on the site's character. I agreed that even localised harm would lead to conflict with Policy CP16. I do not consider the Council's behaviour was unreasonable in relation to the substance of its case in respect of CP16. Furthermore, the Exeter Greenspace Group submitted extensive evidence including in respect of CP16 and wider landscape harms that the Council was not pursuing.
10. Costs can only be awarded where unreasonable behaviour has caused the applicant to incur unnecessary or wasted expense in the appeal process. Even if I were to have concluded that the Council had behaved unreasonably to the extent claimed by the applicant, the work producing evidence to defend its case and submitting evidence at the Inquiry was necessary and does not, in my judgement, represent wasted expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

H Porter

INSPECTOR

³ Statement of Case on Behalf of Exeter City Council April 2022 paras 2.3.1, 3.2.1