



Costs Decision

Site visit made on 20 September 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Costs application in relation to Appeal Ref: APP/U4610/W/22/3299161 Land On The Corner Of Pridmore Road And Lockhurst Lane, Coventry CV6 5PE

- 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 G Ubhi (Lockhurst Estate Limited) for a full award of costs against Coventry City Council.
 - The appeal was against the refusal of planning permission for resubmission of application FUL/2020/2439 for a new residential development comprising of 6 no. 1 bedroom apartments and 1 no. 2 bedroom apartments with associated car parking.
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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 costs may be awarded against a party who has behaved unreasonably and so caused the costs applicant to incur unnecessary expense in the appeal process. This application claims unreasonable behaviour by the Council in terms of (i) preventing development which clearly should have been permitted, (ii) making vague, inaccurate and generalised assertions about a proposal's impact, (iii) persisting in objections to a scheme which an Inspector has previously indicated to be acceptable, and (iv) not determining similar cases in a consistent manner
3. The Council's case for dismissing the appeal relies primarily upon the officer's report on the planning application. No additional appeal statement expanding on the refusal reasons has been provided. The officer's report identifies the living standards of future occupants as being a legitimate factor in the assessment of the scheme. It goes on to state that a key concern is that "there is no external amenity space". However, this statement fails to acknowledge the amenity area between the proposed building and Lockhurst Lane as shown on the drawings. The issue as to whether this space is adequate is a matter of planning judgment and so this is not a case where the development should clearly have been permitted. Nonetheless, the Council's case relies upon the inaccurate assertion that no external amenity space is proposed.
4. I am not convinced the Council was bound to form the same view as the previous appeal inspector on the matter of amenity space. This decision (appeal reference number APP/U4610/A/09/2105297) was made before the adoption of the Coventry Local Plan 2017 (LP) and the National Planning Policy Framework. As such, it was influenced by a different planning policy context to

the current appeal. Also, I have insufficient information on the development permitted at 367 Foleshill Road to be convinced that the Council has acted inconsistently in refusing permission for the appeal scheme. Nevertheless, the Council has acted unreasonably as its key concern is apparently based on the erroneous view that no amenity space would be provided as part of the scheme.

5. In addition, the Council raises concerns in respect of air quality at the appeal site, despite the appellant's air quality assessment that concludes the proposal would be acceptable in these regards. No evidence is provided by the Council that disputes the assessment's findings or that suggests why they should be discounted. The concern that the site is next to a busy road is a vague and highly unconvincing response to the appellant's detailed monitoring and analysis of actual pollutant levels on and near the site. The Council's Environmental Protection comments do not indicate that future occupants would be subject to unsafe levels of air pollution, which is the requirement under LP policy H3. Therefore, the Council has acted unreasonably by failing to substantiate its concerns in these regards.
6. Therefore, I conclude the Council has failed to meaningfully explain or properly substantiate its refusal reasons. This unreasonable behaviour has resulted in the need for the applicant to submit a planning appeal and so incur unnecessary expense. In such circumstances, and having regard to the PPG, I find that an award of costs is justified.

Costs Order

7. 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 G Ubhi (Lockhurst Estate Limited), 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.
8. 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.

Jonathan Edwards

INSPECTOR