



Costs Decision

Hearing held on 27 September 2022

Site visits made on 4 and 5 July, and 27 September 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2022

Costs application in relation to Appeal Ref: APP/V4630/W/21/3281592 Land comprising former allotments, Rear of 1 to 9 Cricket Close, Walsall, WS5 3PU

- 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 Cricket Close LLP for a full award of costs against Walsall Metropolitan Borough Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the erection of 29 dwellings (comprising 22 open market dwellings and 7 affordable units) with landscaping, access roads, car parking and associated infrastructure.
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Decision

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

Procedural Matter

2. The original application for costs was made in writing before the event. Despite requests for a written response, none was provided by the deadlines I set in my Pre-Hearing Notes. As a result, the costs application was updated in writing in advance of the event. Following discussion at the event, in the interests of procedural fairness, it was agreed that oral submissions would be made in response to the application and to provide final comments.

The submissions for Cricket Close LLP

3. In deferring their decision on the appeal application for development of an allocated site, against the repeated advice of their Officers, and in spite of the clear technical evidence of consultees, the Council has delayed development which should clearly have been permitted. Coupled with a number of extensions to time which were sought by the Council and granted by the applicant, the appeal application was therefore with the Council for an excessive amount of time. This was unreasonable behaviour within the terms of the Planning Practice Guidance (the PPG) and caused unnecessary or wasted expense.
4. The applicant therefore considered that they were left with no choice but no appeal against non-determination in order to obtain a decision on their proposals, thereby incurring substantial additional costs.
5. Further to their original application, the applicant has added the failure of the Council to respond to their application, address the evidence produced, and to continue to pursue a reason for refusal based on a misinterpretation of policy to the examples of unreasonable behaviour by the Council.

The response by Walsall Metropolitan Borough Council

6. The Council suggests that resourcing issues have affected their ability to respond timeously. They also state that they do not agree they have misinterpreted policy, and continue to suggest that viability evidence (the January 2021 assessment referred to in my main decision) shows that the proposal can viably deliver affordable housing on the site of a type and tenure preferred by the Council whilst also making other financial contributions. They also claim that the hearing was justified, and the putative reasons for refusal were based on viability evidence, properly considered in line with policy.

The final comments for Cricket Close LLP

7. In their final comments, the applicant adopts their written updated application for a full award of costs and claims that the answers given do not justify anything other than such an award. They also note that the costs application response was not made with reference to the relevant national policy.
8. Turning to the Council's specific defence, the applicant notes that resource challenges do not in themselves justify unreasonable behaviour, that the Council's interpretation and application of their own policy was demonstrably improper, that viability evidence was relevant to the case being made, and specifically, that the Council's costs application response does not acknowledge that the Council's own viability evidence was superseded by that of the appellant. The applicant notes again that the only evidence on viability was supplied by the appellant, as the Council failed to supply a copy of their own viability evidence and that in itself was wholly unreasonable. All of this makes plain that the Council has not substantiated their position with reference to suitable evidence.
9. The applicant went on to state that public opinion is not sufficient grounds to defend an appeal and that (putative) reasons for refusal must be capable of being substantiated with reference to policy, guidance and evidence, which was not done in this case.
10. Finally, the applicant noted that in their opinion this was an unnecessary appeal in related to an application for development of an allocated site, which should have been granted planning permission some time ago.

Reasons

11. The PPG sets out that parties in planning appeals are expected to behave reasonably. It goes on to say that where a party has behaved unreasonably, and that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. The PPG sets out examples of behaviour which may give rise to an award of costs against the Council, including specific guidance on cases such as this one.
12. It is clear from the evidence before me, and indeed, the evidence which was before the Committee at the times it resolved to defer determination of the appeal application that there were no substantive reasons to justify delaying the determination of the proposal. I note that the Committee, and indeed the third-parties who made representations to it, were keen that the applicant consider alternative access options, and indeed, different scales and forms of development to those which the application before them proposed.

13. It is plain that those options were not within the scope of the planning application which had been submitted. Not least because they related to land outside the planning application red-line boundary.
14. Whilst I wholly accept that it is within the gift of Committees to disagree with the recommendations of their Officers, and indeed, to reach decisions which their Officers might otherwise advise against, in this case, it was clear from the evidence around the proposal itself, and indeed, the explicit advice of Officers, that there was no reason to delay or indeed refuse the appeal proposal.
15. There was clear advice from Officers, backed up by the evidence of the Council that the proposal was acceptable in highway safety and congestion terms. I accept that the weight of public opinion was against the proposal on these terms, but despite that, there is no evidence which supports the putative reason for refusal, or wholly demonstrates that the harm which was alleged would arise. Instead, the evidence of the Council clearly pointed the other way, in agreement with the evidence of the appellant.
16. Turning to the issues of viability and affordable housing, the applicant presented their own updated viability assessment in response to that of the Council. The Council did not produce any evidence to the contrary, challenge the evidence of the applicant, or in any way challenge the updated position set out. Nor did the Council seek to address the claims made by the applicant around the proper interpretation and application of policy and its relationship to supplementary planning documents.
17. Coupled with the allocation of the site for development within the development plan for the area, the housing land position of the area, I therefore consider that the putative decision of the Council, and their approach to the appeal application did prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
18. In addition to this, I note the advice in the National Planning Policy Framework (the Framework) to approve development proposals that accord with an up-to-date development plan "without delay".

Conclusion

19. The criteria for an application for an award of costs has two limbs. Firstly, a party must behave unreasonably. It has been established above that the Council did so.
20. The second limb of the test is that that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process. I find that it is clear that it has. As a result of the actions of the Council, and ultimately, the putative reasons for their decision on the appeal application, the applicant has been put to the expense of submitting an appeal, including the production and provision of significant additional evidence. The applicant was also required to provide expert professional witnesses to the event, which had to be rescheduled at short notice owing to procedural errors on the part of the Council.
21. I therefore find that the Council has demonstrated behaviour in their handling of the appeal application and the appeal which could be considered unreasonable in the terms of the PPG, and which then resulted in unnecessary or wasted expense.

22. The application for a full award of costs should therefore be allowed.

Costs Order

23. 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 Walsall Metropolitan Borough Council shall pay to Cricket Close LLP, the full costs of the appeal proceedings described in the heading of this decision.
24. The applicant is now invited to submit to the Walsall Metropolitan Borough 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.

S Dean

INSPECTOR