

Costs Decision

Hearing Held on 11 January 2023

Site visits made on 10 and 11 January 2023

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Costs application in relation to Appeal Ref: APP/P1805/W/22/3300106 Keyostas Ltd, 277 Birmingham Road, Bromsgrove, B61 0EP

- 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 Leo Bromsgrove Ltd for a full award of costs against Bromsgrove District Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the "Proposed Demolition of Existing Buildings and Erection Of 72-Bedroom Care Home".
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Decision

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

Preliminary Matters

2. The application for costs was made in writing in advance of the hearing. The Council responded in writing immediately prior to the hearing. The applicant was then given the opportunity to provide any final comments orally, but simply reiterated their case and referred to their written submission.

The submissions for Leo Bromsgrove Ltd

3. The applicant highlights the part of the Planning Practice Guidance (the PPG) which sets out, amongst other things, that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny.
4. The applicant claims that in making their decision, the Council relied on vague and generalised assertions, unsupported by objective analysis, and used pejorative and exaggerated language to support the reasons for refusal, thereby inappropriately affecting the judgement of the decision maker.
5. The applicant also claims that the decision of the Council was inconsistent with other comparable decisions, in the same Council area and elsewhere in the region.

The response by Bromsgrove District Council

6. The Council counters that the reasons for their decision, and the reasoning which led to it are clear and concise, and that the report did not unduly influence the decision maker. The Council also notes that the comparable applications highlighted by the applicant were referred to in their committee report and in their update to the committee.

Reasons

7. 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.
8. Having read the committee report, the updates to it, and the later appeal statement of the Council, both as evidence in the appeal and more closely for this costs decision, I do not find that their language was pejorative and exaggerated, or that the wording or conclusions were strong, inappropriate or misleading.
9. Instead, I consider the language and tone of their submissions to be consistent with that of the National Planning Policy Framework (the Framework) and policies in the development plan.
10. I also cannot agree that the Council's decision was simply based on a subjective opinion. It is clear to me that their Green Belt conclusions were driven by professional judgment applied to the findings of their own Green Belt Purposes Part One Assessment August 2019, as well as an assessment of the site. Similarly, it is clear to me that their historic environment conclusions were based on professional opinion, as well as professional assessment of evidence submitted by the appellant.
11. With regard to the potential for inconsistent decisions, the committee report shows that the committee were made aware of other similar applications, and indeed, that decisions on applications similar to this one in the Council area had been taken contrary to officer recommendation. The update paper to the committee also shows that the committee were aware of the contemporary appeal referred to by the applicant, as well as the opinion of their officers on the relevance of that case to the one before them.
12. The minutes are also clear that the committee did consider these comparable proposals, but elected, in this case, to follow the recommendation of their officers. I also consider that the minutes show the committee balancing the "considerable merits" of the proposal against "inherent" plan and policy conflict. The minutes show that Members agreed that whilst there was care home need, they also understood that there would be Green Belt impacts arising from the development. That they reached a different conclusion when undertaking that balancing exercise in this case does not suggest to me that their decision making was inconsistent, but rather that the exercise is not an easy one and that each case must be considered on its own merits.
13. As I have set out in my main decision, much of the substance of the disagreement between the parties ultimately lies in the different conclusions reached on the weight to be attributed to the elements in the historic environment balance, the Green Belt balance and ultimately, the section 38(6) balance, all required by guidance, policy and the legislation.

14. I can appreciate the frustration of the appellant that they and the Council fundamentally differ on weight to be given to elements of the proposal and the ultimate result of these balancing exercises. However, I do not consider that the reaching of different conclusions following the exercise of professional planning judgement is itself unreasonable in the terms set out in the PPG.
15. Nor do I consider that because I have reached the conclusion I have in my main decision, the Council was unreasonable in reaching theirs.

Conclusion

16. I therefore find that the Council has not demonstrated behaviour, in their handling of the appeal application which could be considered unreasonable in the terms of the PPG, and which then resulted in unnecessary or wasted expense.
17. The application for an award of costs should therefore be refused.

S Dean

INSPECTOR