
Costs Decision

Site visit made on 13 October 2022

by Jonathan Hockley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th February 2023.

Costs application in relation to Appeal Ref: APP/Z0116/W/22/3297421 40 Baldwin Street, Bristol BS1 1NR

- 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 Westcoast Developments (Projects) Limited for a full award of costs against Bristol City Council.
 - The appeal was against the refusal of planning permission for the erection of a building containing 9 residential flats and office space.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) states that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive.
3. The costs application was made on two main grounds: (i) procedural matters in the late submission of the appeals questionnaire and of the Statement of Case by the Council; and (ii) the evidence provided at appeal stage by the Council.

Procedural grounds

4. On the first ground, the Council submitted their questionnaire and Statement of Case (SoC) late to the Planning Inspectorate. PPG states that a delay in providing information or other failure to adhere to deadlines is an example of unreasonable behaviour which may result in an award of costs. I note the Council's comments concerning their lack of resources, but it is clear that both late submissions could be viewed as examples of unreasonable behaviour, particularly given the lack of warning or explanation at the time.
5. I note the concern of the Applicant over the late submission of the questionnaire and appreciate that this late submission must have been inconvenient. However, it is not clear how this late submission has resulted in unnecessary or wasted expense in the appeal process. In large part the questionnaire contains information that would have been known to the Applicant from the application stage and the planning decision and as such would not have been surprising to the Applicant.

6. The SoC was submitted late but it is unclear whether the Council were informed that this would or would not be accepted. A further copy was submitted by the Council with some further information later on in the appeal process. I saw the SoC as part of this submission, and so considered it only fair and reasonable for the applicant to have the opportunity to make final comments upon such information, in the interests of natural justice.
7. The late submission of the SoC led to the Applicant having to submit a further set of final comments, as their previous set of final comments were made on the basis that the Council had not submitted a SoC. The Applicant's initial final comments where they were unaware of the submission of the Council's SoC were made on 9 September 2022, after the Council had made their submission of the SoC on 30 August 2022 (which the Applicant was unaware of).
8. This is clearly an unfortunate set of events which has led to the Applicant incurring expense in the appeal process. However, given the circumstances of the case, I am not convinced that this was the fault of the Council; while they submitted their SoC late, they were unaware at the time whether it had been accepted or not (and their initial submission predated the Applicant's submission of their initial final comments). It is only later in the process where the SoC was resubmitted as part of additional information submitted that I viewed the SoC and, in the interests of natural justice, made this clear to the Applicant and provided time for a further response. Therefore, while I sympathise with the Applicant on this matter, I do not consider that the Council's actions are an example of unreasonable behaviour which caused the Applicant to incur unnecessary or wasted expense in the appeal process.

Substantive grounds

9. The appellants letter contains reference to thirteen examples where they outline concerns with the Council's responses. I have considered these examples below.
10. The Council consider the presumption in favour of sustainable development and balance the proposal against the deficit of housing supply in the City in their Officer's report. Whilst brief, it is clear that this has been considered. Daylight and sunlight figures are also considered in the Council's evidence. While on occasion this may have been misreported and I have disagreed with the 1.75% ADF figure I do not consider that this amounts to unreasonable behaviour which has led to unnecessary expense; this reason for refusal would have been maintained, and they assess against their own planning policy in their evidence.
11. The lack of privacy raised in the Council's first reason for refusal is not fully justified. However, this is one small part of a larger reason for refusal and has not I consider led to unnecessary expense being expended. Similarly, the lack of explanation of the noise emitting plant and 'overshadowed amenity space' all represent small parts of larger reasons for refusal. While I may have disagreed with the Council, I do not consider that such matters has led to unnecessary expense for the Applicant.
12. I have considered that on this instance the archaeology matters could be conditioned; however, I do not consider the Council have behaved unreasonably in their alternate view – this was to a certain extent a matter of

judgement. Other sites put forward by the Applicant as precedents are considered in the officer report.

13. The applicant considers that matters surrounding the nearby site, 'Application B' are examples of unreasonable behaviour, including the reason for refusal and impacts on the conservation area of the respective schemes. I note and accept on this matter the Council's statement that they took legal advice on the first matter and on the second matter, harm (or otherwise) to the CA did not form a reason for refusal.
14. Finally, I do not consider that the Council directly accuse the Applicant of attempting to distort the truth – more that they considered quotes were being taken out of context which in their view distorted their true assessment. I have read and considered all the evidence in coming to my decisions. While the Councils' statement of case may be fairly brief, I consider it and the Officer's report justifies their reasons for refusal. While I may have disagreed with a number of these reasons for refusal I do not consider that this represents unreasonable behaviour.
15. I recognise the Applicant's clear concern and sense of grievance over various matters regarding the application and subsequent appeal. However, in line with the guidance contained within the PPG and considering natural justice, I do not consider that the Council have behaved unreasonably resulting in unnecessary or wasted expense.

Jon Hockley

INSPECTOR