



Costs Decision

Hearing Held on 15 November 2022

Site visit made on 15 November 2022

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Costs application in relation to Appeal Ref: APP/Z0116/W/22/3296266 Land at Home Gardens, Blackboy Hill, Redland Hill, Bristol BS6 6UU

- 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 Elizabeth Blackwell Properties for a full award of costs against Bristol City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for Outline planning application for the redevelopment of the site comprising demolition of existing buildings (1-4 Home Gardens, 1-2 The Bungalows and associated garages and outbuildings) and the erection of two new buildings to provide up to 60 residential units (Class C3) (including 20% affordable housing) and up to 215sqm of flexible office space (Class E) to Whiteladies Road frontage and associated works. (Permission sought for Access, Scale and Layout).
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

The submissions for Elizabeth Blackwell Properties

2. The Applicant contends that the Council acted unreasonably in refusing planning permission for the appeal proposal, contrary to the recommendation of its officers. The applicant acknowledges that members are not obliged to accept the recommendations of their professional officers. However, if taking a contrary decision it should be on grounds that can be fully justified in planning terms. It is the applicant's case that such grounds were not provided. The applicant contends that neither of the reasons for refusal stand up to objective analysis and that the appeal proposals clearly should have been permitted. The applicant addressed each reason for refusal separately, with the reason relating to highway matters split into two parts; the construction phase and operational phase impacts. This reflects the main issues of the decision letter.

First reason for refusal - Construction phase

3. The reason for refusal places emphasis on the construction phase by using the words 'in particular during the construction phase.' The applicant contends that this position cannot be reasonably substantiated, and that any temporary construction impacts would be minor, would not cause unacceptable harm and would be adequately managed.

4. The applicant asserts that it is exceptionally unusual for the potential construction impacts of a development to constitute a reason for refusing planning permission. The applicant's evidence indicates that in the last decade the Council has not refused an application for planning permission on such grounds. In the context of the council's decision in this case, the applicant expresses their surprise that the matter was a reason for refusal, when some very large developments have been approved in tight knit parts of the city where significant construction impacts on site neighbours could be reasonably anticipated. Furthermore, the applicant draws attention to published guidelines, such as those of Planning Aid England/Department of Communities and Local Government contained in their Statement of Case, which advise that issues that are not normally relevant to the planning application decision making process include matters arising from the construction period.
5. The applicant contends that the consistent approach of the council has been to deal with such matters through the imposition of a planning condition requiring the submission and approval of, inter alia, a Construction Management Plan. Moreover, that this position is accepted by the council in its Statement of Case where it is stated: 'This Local Planning Authority has consistently taken the view that given the close proximity of surrounding development to sites across the city, that it is a sensible method of protecting the amenity of surrounding neighbours.'. It is argued that the council's Statement of Case provides no substantive evidence as to why a planning condition would not suffice here, nor any explanation as to what is so exceptional about the circumstances here that warrant the council for apparently the first time ever refusing planning permission due to temporary construction impacts. It is asserted that Members of the committee took their contrary view to professional officers based on representations made by local residents, rather than having any technical evidence to support their conclusions.
6. Accordingly, the applicant argues that the council has prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It has failed to produce evidence to substantiate the reason for refusal. It has set out vague and generalised assertions about a proposal's impact, which are based on 'political' considerations and are unsupported by any objective analysis. It refused planning permission on a planning ground capable of being dealt with by condition and where it is concluded that suitable conditions would enable the proposed development to go ahead. Further, the council has determined similar cases in a consistent manner but, for the first time ever, refused a planning application on construction phase impacts.

First reason for refusal - Operational phase

7. The Applicant identifies that the proposed development would utilise the use of an existing lawful access and result in a reduction in the level of parking at the site, and that no other operational impacts were identified, including any impacts on the local highway network. They assert that there was no sound reason for the Council to conclude that the operational phase of the proposal would be detrimental to living conditions of nearby occupiers.
8. The applicant provided evidence to demonstrate that the composition of the traffic generated by the development site is also unlikely to change, with the site currently being used by staff of local businesses parking their cars during

the working day and with the development, the site being used by residents of the development to park their cars. As a result, during the operational phase of the proposed development, traffic generated by the development over the existing access would not significantly vary, whether during the peak traffic periods or across the day.

9. The applicant points to the fact that their evidence in this regard was consistent with the views expressed by the council's Transport Development Management (TDM) Team, both in writing as a consultee on the outline application and verbally at the committee meeting, where the minutes confirm that the committee were advised that 'There was no technical reason to oppose the application on the grounds of the existing access to the highway.'
10. The applicant goes on to assert that the council's Statement of Case provided no substantive evidence as to why it was reasonable for the committee to take a contradictory view to the professional advice provided by the TDM team, and come to the conclusion that the appeal scheme, through making use of the existing access, would result in unacceptable harm to residential amenity of residents of The Vincent. The council, in the applicant's view, is unable to describe exactly what this perceived harm would be, nor is it able to quantify it. The applicant argues that the Statement of Case is vague and simply states that Members were influenced by the views of residents expressing concern that the existing access serving 34 car parking spaces was not intended to be an access to a development.
11. In essence the applicant argues that the council's evidence does not provide any substantive evidence on this matter and does not explain why members could reasonably have come to a different conclusion than their professional officers on this issue.
12. The applicant summarises that the council has prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. That the council has failed to produce evidence to substantiate the reason for refusal, instead setting out vague and generalised assertions about the proposal's impact, which are based on 'political' considerations and are unsupported by any objective analysis.

Second reason for refusal - living conditions

13. In respect of the second reason for refusal, the council contended that the Appeal Scheme would, by nature of its scale and proximity to the nearest properties on St. Vincent's Hill, result in an unacceptable impact on residential amenity 'by reducing outlook and creating a sense of overbearing.
14. The applicant contends that they provided robust evidence to demonstrate that the appeal scheme would be a well-designed and contextual proposal, which would not give rise to any reduced outlook or sense of overbearing to the nearest properties on St. Vincent's Hill that would warrant outline planning permission being refused. In contrast the applicant argues that the council's Statement of Case provided no substantive or technical evidence as to why it was reasonable for the committee to take a contradictory view to its professional officers on this matter.

15. The applicant asserts that the council has prevented development which should have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. That it has failed to produce evidence to substantiate the reason for refusal; and that it has relied on vague and generalised assertions about a proposal's impact, which are based on 'political' considerations and are unsupported by any objective analysis.
16. In conclusion in respect of the applicant's submissions; they assert that for the reasons set out above in respect of the reasons for refusal, the council behaved unreasonably in refusing outline planning permission for the appeal proposals. The applicant submits that they engaged in lengthy pre-application discussions and made further revisions to the proposals during the statutory determination period. As a result, the applicant contends that the final scheme was the subject of a robust and clear recommendation for approval on two separate occasions. It is the applicant's position that it was rejected by members for reasons which do not stand up to scrutiny on their planning merits.
17. The applicant acknowledges that members are not bound to follow the recommendations of an officer report, but that any contrary decision should be justified. Which, in the applicant's view, has not been justified.

The response by Bristol City Council

18. The council considers that the decision that was made was entirely reasonable and there are no legitimate grounds for awarding costs.
19. In response to the applicant the council asserts that, as acknowledged by the applicant, members are not obliged to accept the recommendations of their professional officers." Whether the members' reasons for doing so is a matter for this appeal, but it is the case of the council that members were perfectly entitled to reflect real concern of surrounding residents and to make the decision that they did. The council contends that it was entirely reasonable for the Members of the Planning Committee to take seriously the concerns of local residents. That such concerns are a key material consideration in the determination of any planning application.
20. The council goes on to assert that it was entirely reasonable and correct for Members of the Planning Committee to consider all the technical information put before them and to weigh that against other material considerations. In this case, the technical evidence submitted was considered by the Members, but was considered to be outweighed by the concerns of nearby occupiers that were legitimately raised. The council highlights that the residents, who live in such close proximity to the site, were not "vague" about the impact the development of this site would have on their amenity. Further, that their legitimate concerns should be afforded weight alongside any "objective analysis", and should not be dismissed as "political" implying that their concerns have little or no weight at all.
21. The council reiterates that each application is determined on its own merits. They suggest that in this case, this site is an incredibly constrained site and warrants careful consideration of how the development could be constructed.
22. It is the case of the council that it has in no way acted unreasonably. The Members legitimately listened to the concerns of the people who live in very

close proximity to the site. As a consequence of those concerns the Committee resolved that the amenity of the residents who live in such close proximity to the site would be so undermined that they voted to refuse planning permission.

Reasons

23. Irrespective of the outcome of an appeal, the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expenses in the appeal process. The PPG's list of behaviour which may be deemed unreasonable is not exhaustive.
24. The application is made principally on the grounds that the council behaved unreasonably with respect to the substance of the matter under appeal, including in relation to its refusal to grant permission and its continuing defence of what the applicant considers to be an untenable position, not justified by any substantive evidence.
25. Council Members are entitled to go against the professional advice of Officers as long as it is clearly demonstrated why the proposal is unacceptable and clear evidence is provided to substantiate that reasoning. In respect of the first reason for refusal, the applicant had submitted a Transport Statement with the planning application, and the council's TDM accepted and agreed that the site would operate safely and not create a risk to users of the highway during the life of the development. Further, it was accepted by the TDM that a condition requiring a Construction Management Plan could be secured in order to protect the amenity of nearby residents. As highlighted in my decision, I acknowledge the concerns of residents, and the perception of risk associated with the proposal, in particular the construction element. Nonetheless, these matters are capable of being addressed by way of a suitably worded condition. The Council has not provided any clear evidence as to why the construction traffic could not be regulated through the use of a condition, nor has it provided any technical evidence to support its reason for refusal in respect of highway safety for the operation of the development.
26. Thus, in relation to this matter the Council has failed to produce evidence to substantiate the reason for refusal. The Council has not robustly justified why elected Members came to a different conclusion to the technical advice of their Officers. As a result, this reason for refusal was unreasonable, and the applicant has incurred unnecessary costs associated with this reason for refusal in addressing this issue as part of the appeal.
27. In terms of the second reason for refusal, the same principle applies, namely that Members are entitled to go against the professional advice of Officers as long as it is clearly demonstrated why the proposal is unacceptable and clear evidence is provided to substantiate that reasoning. The effect of the scale and mass of the proposal in respect of whether or not it would be overbearing could only truly be appreciated when standing in the houses of those affected. Despite efforts made to reduce impact, such an issue is one of judgement, being mindful of the physical environment. Having regard to my own conclusions in this regard I agree with the Council that the proposal required an exercise of planning judgement. In this respect, adequate evidence was submitted by those directly affected to show that the Council did not apply its judgement in an unreasonable manner.

28. Given my findings in relation to the second reason for refusal, I do not consider that the Council has prevented or delayed development which should clearly be permitted.
29. However, I find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense as described in the PPG, has been demonstrated in relation to the first reason for refusal. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the Council's first reason for refusal, is justified.

Conclusion

30. The Council's reasons for refusal consisted of two reasons but which essentially broke down into three elements. I have found, based on the evidence presented, that the first reason for refusal was unreasonable, but not the second.
31. I therefore conclude that unreasonable behaviour, as described in the PPG, resulting in unnecessary or wasted expense has been demonstrated, and a partial award of costs, to cover the expense incurred by the applicant in contesting the first of the Council's reason for refusal, is justified.

Costs Order

32. 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 Bristol City Council shall pay to Elizabeth Blackwell Properties, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
33. The applicant is now invited to submit to Pendle 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.

J Ayres

INSPECTOR