



Costs Decision

Site visit made on 9 March 2023

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

**Costs application in relation to Appeal Ref: APP/K3415/W/22/3308505
Former Site of Bridge Cross Garage, Cannock Road, Chase Terrace,
Burntwood WS7 1JY**

- 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 UV Care Burntwood Ltd for a full award of costs against Lichfield District Council.
 - The appeal was against the refusal of planning permission for a 3 storey, 78 bed care home and associated car parking, and access arrangements.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's case for an award of costs is on substantive grounds. This is on the basis that the applicant was put to unnecessary or wasted expense in having to defend reasons for refusal that were not substantiated and two of which were subsequently withdrawn. Further, that the Council has not determined similar cases in a consistent manner, with particular regard to a previous planning permission for the appeal site.

Refusal Reasons 1 and 2

4. The applicant's original costs application states that costs are sought with respect to the Council's first and second reasons for refusal. As it will be seen from my appeal decision, I found that the proposal would result in unacceptable harm to the character and appearance of Cannock Road. Therefore, refusal reason one was justified.
5. Having regard to refusal reason 2, the Council concluded that the proposal would not provide a suitable mix of uses for its town centre location. It will be seen from my decision that I concluded that the proposal would bring a range of people into the town centre, helping to increase activity there. Also that the proposed community hub, whilst modest in scale, would be a welcome addition. Whilst I reached a different conclusion to the Council on this matter, given the location of the appeal site within the town centre, and policy aspirations for a mix of uses, it was not unreasonable for the Council to conclude as they did.

Refusal Reason 3

6. The Council's officer report concluded that the proposed care home use would, on balance, be acceptable in this town centre location. Whereas, following discussion at planning committee, refusal reason 3 was added, stating that the proposed use would conflict with surrounding uses in the town centre. Council Members are not duty bound to follow the advice of their professional officers, where planning grounds are identified to substantiate their reasons for reaching a different view.
7. Whilst this reason was withdrawn by the Council at appeal, there is a degree of overlap in refusal reasons 2 and 3. As set out in my decision, I concluded that the proposed uses would be acceptable. However, as a matter of planning judgement it is not unreasonable that the Council concluded otherwise. Given the overlap between reasons 2 and 3, that the imposition and subsequent withdrawal of reason 3 led to unnecessary and wasted expense has not been clearly demonstrated.

Refusal Reason 4

8. The Council's officer report concluded that, following amendments to the plans during the determination period, the proposal was acceptable on highway grounds. Conditions were proposed to address construction management, off site highway works, access improvements, suitable parking provision and implementation of the travel plan. The site was considered to be a sustainable location within the town centre. The officer report also confirmed that the Highways Authority had no objections.
9. Nevertheless, following debate at planning committee, refusal reason 4 was added. This specified that the proposal would lead to traffic congestion resulting in unacceptable highways impact. Whilst discussions at planning committee involved the ward Councillor and others with local knowledge of the area, this refusal reason does not appear to have been adequately substantiated by the Council to indicate how the proposal would lead to unacceptable harm to highways. As it was withdrawn following the applicants appeal submission, it was not addressed in the Council's appeal statement.
10. Notwithstanding the lack of objection in the officer's report and absence of objection from the Highways Authority, in the circumstances of this case it was reasonable for the applicant to supplement their case on this matter at appeal. Therefore, I find that the Council acted unreasonably in failing to substantiate refusal reason 4 and that this led to wasted expense for the applicant.

Not determining similar cases in a consistent manner

11. The applicant considers that the Council acted inconsistently in light of the previous approval of a three storey scheme on the appeal site (Ref 17/00581/OUTM). However, whilst the Council had previously accepted the principle of a three storey building through the outline scheme, it does not automatically follow that detailed proposals for an alternative three storey scheme would be acceptable. For the reasons given in my appeal decision I concluded that, whilst the principle of a three storey building could be acceptable, the proposed design would unacceptably harm the character and appearance of Cannock Road. Accordingly, I find that the Council's approach to

these different proposals has not caused the applicant unnecessary or wasted expense at appeal.

Conclusion

12. For the reasons set out above I conclude that it has not been clearly demonstrated that reasons for refusal 1 to 3 caused the applicant unnecessary or wasted expense at appeal. Also that the Council's approach to similar cases has not caused the applicant wasted expense. However, I find that the fourth reason for refusal, addressing highways impact, was unsubstantiated. Consequently its withdrawal after the submission of the appeal led to wasted expense. As such, a partial award of costs is justified, to cover only the expense incurred by the applicant in contesting refusal reason 4.

Costs Order

13. 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 Lichfield District Council shall pay to UV Care Burntwood Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's fourth reason for refusal relating to unacceptable highways impact; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. 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.

Rachel Hall

INSPECTOR