



Costs Decision

Inquiry held between 23 - 31 May 2023

Site visit made on 1 June 2023

by Dr Rachael A Bust BSc (Hons) MA MSc LLM PhD MIOl MCMi MIEEnvSci MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th July 2023

Costs application in relation to Appeal Ref: APP/C2741/W/23/3314331 11 The Village, Wigginton, York YO32 2PL

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Churchill Retirement Living Limited for a partial award of costs against City of York Council.
 - The inquiry 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 planning permission for the development proposal originally described as "Redevelopment of site for 45 Retirement Living apartments for older persons with guest suite, communal facilities, managers office, access, car parking and landscaping."
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Decision

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

The submissions for Churchill Retirement Living Limited

2. The costs application was submitted in writing during the Inquiry and was supplemented orally. In summary the applicant contends that the Council has failed to produce evidence to substantiate their concerns in relation to the issue of impact on highway safety, in particular, that no substantive evidence has been produced to support the position that the level of car and cycle parking proposed is insufficient.
3. On the issue of car parking spaces, the applicant argues that the Council has not identified any breach of an appropriate parking standard and that the Council provides no evidence from any comparable sites or surveys regarding the availability of on-street parking. Furthermore, the references made to Census data by the Council's witness, Ms Vergereau, do not support the request for 50% car parking provision for the specific form of development being sought.
4. In relation to cycle parking, the applicant identifies that the Council's witness, Ms Vergereau, agreed that the Department for Transport Local Transport Note (LTN) 1/20¹ suggested minimum cycle parking capacity was met in relation to the relevant category of development being proposed. The Council has provided no evidence to substantiate the 51 cycle spaces being sought.

¹ CD06.06, Table 11-1

5. The applicant therefore contends that the Council has behaved unreasonably resulting in unnecessary expenditure and as a consequence should be awarded its costs in relation to the preparation and presentation of the transport related evidence.

The response by the City of York Council

6. The costs application response was submitted in writing during the Inquiry with the Council confirming that they did not need to supplement their position orally.
7. In summary the Council considers that it has not behaved unreasonably, and the costs application should be refused. The Council considers that guidance in Appendix E of the 2005 Draft Local Plan and in LTN 1/20 are guidance and are not standards. Furthermore, the Council considers that Census data is the best available evidence for the purposes of examining car usage by age and accommodation type within York. They also note that whilst the proposal refers to retirement provision there is no restriction enforcing this and that an age restriction of 65/60 could still allow for future occupiers that may still be working.
8. The Council also refers to evidence of local people that the Belfry Court facility and its parking provision leads to on-street parking and thereby a highway safety issue. They identify that there is no obligation on the Council to undertake counter surveys if it concludes that the methodology undertaken by the appellant is not the most appropriate.

Reasons

9. The Planning Practice Guidance 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.
10. The policy position relating to car parking and cycle parking is not set out in any adopted development plan. Consequently, the main parties disagree on what constitutes the main material planning considerations upon which an appropriate level of parking for both cars and cycles should be based.
11. The appeal scheme proposes a total of 16 car parking spaces and 6 cycle parking spaces. The Council in its evidence took the starting position that the appeal scheme should provide 23 car parking spaces and 51 cycle parking spaces².
12. On the issue of car parking, at the Inquiry it was agreed by the applicant and the Council that Appendix E to the 2005 Draft Local Plan set out the only published car and cycle parking standards for York. That Local Plan was not adopted and so does not therefore have the statutory weight of being part of the development plan for decision-making. I also note that Appendix E refers to the figures it sets out as being maximum parking standards, this approach is inconsistent with paragraph 108 of the Framework, which identifies that maximum parking standards should only be set where there is clear and compelling justification.

² CD09.03, paragraph 3.25

13. In relation to the category of 'sheltered housing' the guidance in Appendix E is 1 parking space per 4 units and 2 spaces if there is a resident warden and 1 space per two non-residential staff. The Council accept that applying this guidance would mean that the appeal proposal exceeds the amount of car parking indicated in Appendix E. However, the Council identified that there is no definition of 'sheltered housing' in Appendix E. The position adopted by the Council that the car parking provision is too low is inconsistent with their acknowledgement that Appendix E is a relevant material consideration.
14. It is the Council's position that it is relevant to go on and consider data from the 2011 Census in relation to car ownership. In this regard, it has considered amongst other data, car availability by accommodation type based on households living in a 'flat, maisonette, apartment, caravan or other mobile or temporary structure'. The Council's evidence fails to adequately explain the rationale as to how using Census data directly leads to the requested provision of 23 car parking spaces.
15. In relation to the matter of car parking I find that the Council has failed to substantiate its case based on objective and appropriate evidence that specifically justifies its position. The Council has also sought to adopt contradictory positions, for example arguing in the Proof of Evidence³ that research carried out in 2016 is too old to be considered to be suitable for transport analysis when at the same time seeking to base its own position on the Census data from 2011 which is even older.
16. Turning to the issue of cycle parking, at the Inquiry both the applicant and the Council agreed that the relevant guidance is set out in LTN 1/20. The Council in its evidence refers to two different residential categories in Table 11-1 of LTN 1/20. The first being that one cycle parking space should be provided for each bedroom in residential developments. The second being for the residential category of 'sheltered/elderly housing/nursing homes' which looks at 0.05 cycle parking spaces per residential unit for short stay and 0.05 spaces per bedroom for long stay. The Council has not set out how applying either of these standards in LTN 1/20 justifies the 51 cycle spaces being requested. Neither does it provide any cogent or substantive evidence to justify its position having regard to any other standards, guidance or relevant material planning considerations.
17. In cross examination the Council's witness agreed that the appeal proposal did meet the relevant provisions set out in LTN 1/20. In this regard, I find that the Council has not substantiated its starting position that cycle parking should be based on 1 space per unit and additional 5-6 spaces to cater for staff and visitors to the site.

Conclusion

18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

19. 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,

³ CD09.03, paragraph 3.35

and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the City of York Council shall pay to Churchill Retirement Living Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the highways and transportation evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed.

20. The applicant is now invited to submit to the City of York 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.

Rachael A Bust

INSPECTOR