



Costs Decision

Inquiry held on 27 and 28 June 2023

Site visit made on 28 June 2023

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Costs application in relation to Appeal Ref: APP/R0660/W/23/3317173 17 & 19 Holly Road South, Wilmslow, Cheshire SK9 1NQ

- 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 for a partial award of costs against Cheshire East Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of existing buildings and erection of 34 Retirement Living Apartments including Lodge Manager's office and reception, communal facilities, guest suite, car parking and landscaping.
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Decision

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

The submission for Churchill Retirement Living

2. A costs application was submitted in writing prior to the Inquiry. The applicant was seeking the costs of responding to the Council's third reason for refusal, which concerned a lack of on-site parking resulting in pressure for on-street parking to the detriment of the free flow of traffic, together with the full costs of the appeal from 8 June 2023.
3. The grounds for the costs application were that the Council had no substantive evidence to support its third reason for refusal or to contradict the evidence contained in the submitted Transport Statement.
4. Furthermore, the applicant submitted an almost identical, parallel planning application to the Council after the appeal had been made, which sought to resolve the outstanding differences between the parties. If this were granted planning permission the applicant would be likely to withdraw the appeal.
5. By the time this application was to be determined, the Council had resolved not to defend any of the three original reasons for refusal. However, on 8 June 2023 this parallel application was refused planning permission for various reasons, relating to the effects on the character and appearance of the area, the living conditions of nearby residents and parking provision, none of which (apart from parking provision) had been matters of concern to the Council previously.
6. The refusal of planning permission meant that the appeal was not withdrawn, and the applicant incurred costs of preparing for and attending the Inquiry.

The response by Cheshire East Council

7. The response was made in writing and verbally at the Inquiry. The Council considers the third reason for refusal to be a matter of planning judgement that Members were entitled to make. There was a significant difference between the proposed parking provision and the parking standards contained in Appendix C of the Cheshire East Local Plan Strategy (CELPS) and Members were concerned about the effects of this on nearby roads.
8. Furthermore, even if this behaviour was considered to be unreasonable, there would be no unnecessary expense, because this was an issue raised by interested parties, and which the applicant would need to respond to in their submissions and at the Inquiry.
9. The Council's refusal of planning permission of the parallel planning application on 8 June 2023 occurred after the May local elections, which resulted in a significant change to the membership of the planning committee. The new members of the planning committee were not bound by the decisions of their predecessors and were entitled to reach their own views on proposals.
10. In any event, the Inspector has no authority over the parallel planning application and so could not award costs for this appeal on the basis of alleged unreasonable behaviour arising from that application. In terms of unnecessary expense, a decision as to whether to withdraw the appeal was a matter entirely for the applicant.

Reasons

11. Parties in planning appeals normally meet their own expenses. However, the Government's 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.
12. Following a review of the Council's Costs response, the applicant withdrew the first ground for its application in relation to the Council's third reason for refusal. This was on the basis that whilst the Council's behaviour in this regard was still considered unreasonable, it was accepted that unnecessary expense was not incurred, given the representations from interested parties on this issue that required a response.
13. With reference to PPG¹, the applicant gave four examples of behaviour that could lead to a substantive award of costs against a Local Planning Authority. The first two examples fell away with the withdrawal of the first ground for an award of costs.
14. The third example: *not determining similar cases in a consistent manner* does not apply to the appeal proposal, which was determined before the parallel application was refused.
15. The final example: *if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for*

¹ PPG – Appeals - Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

an abortive appeal which is subsequently withdrawn does not apply to the appeal proposal, as was agreed by the applicant at the Inquiry.

16. Whilst the behaviours listed in PPG are not exhaustive, none of the examples given by the applicant support an award of costs in this case. With reference to PPG and to the applicant's remaining ground for an award of costs, I cannot find any unreasonable behaviour by the Council in this appeal.
17. The applicant is wholly concerned with the decision of the Council to refuse planning permission for the parallel application on 8 June 2023 as being unreasonable behaviour which has led them to incur unnecessary expense in the appeal process.
18. Regardless of the composition of the planning committee, it is clear that the Council had formally resolved not to defend any of its reasons for refusal for the appeal proposal and had not previously raised any other objections to it, by the time planning permission was refused for the parallel application on 8 June 2023.
19. However, notwithstanding the great similarities with the appeal proposal, and some overlap in evidence, the refusal of the parallel planning application is manifestly separate to this appeal. It is, therefore, outside the scope of the appeal and the associated costs process.
20. Furthermore, whilst the applicant is very likely to have withdrawn the appeal had planning permission for the parallel application been granted, there is no certainty they would have done so, and there is no formal mechanism that would compel them to. Such action is at the discretion of the applicant.
21. I note the applicant's frustration regarding the Council's decision to refuse the parallel planning application in the circumstances. However, any unreasonable behaviour leading to unnecessary expense incurred as a result of that refusal would need to be addressed by the appointed Inspector, were that decision to be appealed and an application for costs made.
22. Consequently, for this appeal, unreasonable behaviour resulting in unnecessary or wasted expense, as set out in PPG, has not occurred and an award of costs is not justified.

Andrew Parkin

INSPECTOR