The Planning Inspectorate

Costs Decision

Inquiry opened on 6 June 2023

Site visits made on 31 May, 16 June, and 3 July 2023

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Decision date: 16th October 2023

Costs application in relation to Appeal Ref: APP/U4610/W/22/3313890
Land off Abbotts Lane and Upper Hill Street, Coventry

- 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 CDP Developments Ltd for a partial award of costs against Coventry City Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for: Full planning application of 212 dwellings (Class C3) served via access from Abbotts Lane and Upper Hill Street; strategic landscaping and earthworks; temporary car parking; surface water drainage and all other ancillary and enabling works. Outline planning application for new residential development up to 478 units (Class C3); ancillary Class E development of up to 950 sqm of floorspace; strategic landscaping and earthworks; surface water drainage; and all other ancillary infrastructure and enabling site works with means of access to be taken from the connections from Abbotts Lane and Upper Hill Street (part of the full application) for consideration; all other matters (layout, appearance, scale, and landscaping) reserved for subsequent approval.

Decision

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

The submissions for the Appellant

2. These were submitted in writing, in accordance with an agreed timetable, after the Inquiry closed.

The response by the Council

3. This was submitted in writing, in accordance with the agreed timetable, and included a counter-claim for costs, that is dealt with separately.

Reasons

4. Planning Practice Guidance (PPG) tells us that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Such unreasonable behaviour may be procedural, relating to the appeal process, or they may be substantive relating to the issues arising from the merits of the case presented.

5. The PPG provides a list of the types of behaviour that might give rise to a procedural award of costs against a local planning authority. These include: lack of co-operation with the other party or parties; delays in providing

information or a failure to adhere to deadlines; not agreeing a Statement of Common Ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties; introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; and providing information that is shown to be manifestly inaccurate or untrue.

6. The PPG goes on to list the types of behaviour that might give rise to a substantive award of costs against a local planning authority. These include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions; acting contrary to, or not following, well-established case law; persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable; or not determining similar cases in a consistent manner.

7. Against that background, the application made on behalf of the appellant seeks a series of partial awards relating to various aspects of the case.

Viability

8. When the Council determined the application, the viability consultants acting for the appellant and the Council had agreed that the Residual Land Value produced was lower than the proposed Benchmark Land Value and there was no surplus generated to deliver affordable housing or planning contributions. Nevertheless, the Council refused planning permission on the basis that 'notwithstanding the viability assessment, the proposals fail to deliver affordable housing as part of the planning application'.

9. Whatever the position in terms of conditions attached grant funding from WMCA, that I explain in my parallel decision on the appeal, the stance of the Council was palpably unreasonable as the reason for refusal directly contradicts the agreed viability position.

10. The impacts of that unreasonable behaviour could have been salvaged had the Council withdrawn the reason for refusal at an early stage of the appeal process, or alternatively, agreed a Statement of Common Ground early enough in the process to save the appellant the expense of preparing evidence to counter the reason for refusal. The Council did neither.

11. A Statement of Common Ground on viability was eventually handed up to me on 8 June but by then, the appellant had been put to the expense of preparing their evidence for the Inquiry, and for the relevant witness to attend.

12. Given the content of the Statement of Common Ground on viability, and the case advanced by the Council on this matter, which I have found wanting for reasons that must have been obvious to the Council, I find that the Council's conduct on this matter has been unreasonable. The appellant has been put to the expense of preparing evidence and arranging for an appearance at the Inquiry when this need not have been necessary.

Housing Land Supply

13. The application was determined at a time when the Council considered that it could demonstrate the required five years of housing land supply against the housing requirement in its Local Plan. However, it would have known, or at least should have known, that this situation was about to change given the age of the Local Plan, so that the standard method would apply.

14. With that in mind, the appellant's Statement of Case explained the situation and alleged that the Council could not now demonstrate the required 5 years of housing land supply with the obvious implications, because of the National Planning Policy Framework, for the way a decision should then be approached.

15. There was contact between the parties on the subject of housing land supply in the run up to the Inquiry. Eventually, a Statement of Common Ground on Housing Land Supply was handed up to me on 12 June, shortly before the round table session set up to deal with the matter. In the Statement of Common Ground, the Council accepted the appellant's position.

16. That is clearly unreasonable behaviour on the part of the Council as the Statement of Common Ground could, and should, have been agreed much earlier in the process. That way, the appellant would not have been put to the unnecessary and wasted expense of preparing evidence for the Inquiry on this matter, and for their witness attending the Inquiry. In their response to the appellant's claim for costs, the Council accepts this conclusion.

Air Quality

17. The Council has continued to resist the proposal on the basis of the impact they say it might have on air quality in the City Centre Air Quality Management Area (AQMA). There are two main problems with that stance. First, the Council's stance fails to take account of the Local Air Quality Action Plan (LAQAP) that as a result of a Ministerial Direction, the Council has to put in place 'in the shortest possible time'. The Council accepts that the risk of exceedance in the AQMA, in 2027, that they rely upon, will only be present if the LAQAP is not then in place. Getting the LAQAP in place in the shortest possible time is the Council's responsibility and what is more, there are measures that the Council can take, outside the LAQAP, to improve air quality in the AQMA. In any event, the projected increase in NO2 as a result of the proposal was minimal, and far below the level of increase projected for the Eastern Green SUE.

18. That leads on to the second point. When the Council resolved to grant planning permission for the Eastern Green SUE, it did so on the basis that by the time it reached the operational phase, the mitigation inherent in the LAQAP would be in place. That was the correct approach, and it is obviously unreasonable for the Council not to have taken the same stance in this case. The appellant has been put to the unnecessary and wasted expense of addressing air quality in evidence, and appearing at the Inquiry, when it should never have been an issue between the parties.

Highways

19. I have to say that I found the Council's stance on the highways impacts of the proposal difficult to understand. First, the Council withdrew the second part of their first reason for refusal relating to highway capacity and car parking and agreed that subject to the inclusion of a Residents Parking Zone and other

contributions, that the impact of the development in these terms was acceptable. In their highways rebuttal, which was produced very late, on the Friday before the Inquiry opened, the Council took the view that, amongst other things, the proposal would result in an over-provision of car parking.

20. While this late change resulted in the Council taking a more enlightened stance, that rather fundamental change in position took place after the appellant had prepared their evidence in relation to that part of the reason for refusal. That is unreasonable because there is no good reason why the acknowledgement could not have been confirmed much earlier.

21. As I have set out in my parallel appeal decision, the car parking provided as part of the scheme is excessive because of the accessible nature of the site. If the location of the site is such that it can be assumed that residents of the proposal would not need to rely on a car because of ready access to public transport, then I fail to understand why they need to be encouraged to use public transport through Mobility Credits.

22. In that overall context, it is very clear that the Council has been unreasonable in dealing with the highways issue and this has involved the appellant in unnecessary or wasted expense in producing evidence and appearing at the Inquiry. This could have been avoided through proper engagement at an earlier stage in the appeal process.

Housing Mix

23. The Council suggests that the proposal is unacceptable in terms of the housing mix put forward in breach of Local Plan Policy H4. This policy sets out in the first instance that the Council will require proposals for residential development to include a mix of market housing which contributes towards a balance of house types and sizes across the city. Secondly, it says that in assessing the housing mix in residential schemes, the Council may take into account circumstances where it may not be appropriate to provide the full range of housing types. These include: b) locational issues, such as highly accessible sites within or close to a designated centre where larger homes and low/medium densities may not be appropriate; and c) sites with severe development constraints where housing mix may impact on viability.

24. In my parallel appeal decision, I have found no breach of this policy in terms of what the proposal includes because the housing mix is intended to be balanced across the city. Moreover, in the light of the evidence, parts b) and c) of the policy seem to me to be directly applicable to the proposal at issue.

25. In that context, I agree with the appellant that the Council has misunderstood or misapplied their own policy. That is unreasonable and not something that the Council ought to have pursued. The appellant has been put to the expense of producing evidence, and appearing at the Inquiry, to address this issue. That should not have been necessary.

Conclusion

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

Costs Order

27. 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 Coventry City Council shall pay to CDP Developments Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with viability, housing land supply, air quality, highways, and housing mix; such costs to be assessed in the Senior Courts Costs Office if not agreed.

28. The applicant is now invited to submit to CDP Developments Ltd, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul Griffiths

INSPECTOR