



Costs Decision

Site visit made on 3 April 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2024.

Costs application in relation to Appeal Ref: APP/W3710/W/23/3330209 206 Camp Hill Road, Nuneaton, Warwickshire CV10 0JL

- 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 Camp Hill Dental Practice for either a partial or full award of costs against Nuneaton and Bedworth Borough Council.
- The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.

Decision

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

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. Paragraph 047 of the PPG¹ indicates that local planning authorities will be at risk of a procedural award being made against them for, amongst other things, introducing fresh and substantial evidence at a late stage necessitating extra expense for work that would not otherwise have arisen.
4. Paragraph 049 of the PPG² indicates that local planning authorities will be at risk of a substantive award being made against them for, amongst other things, vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The applicant claims, in summary, that the Council acted unreasonably in introducing Policy BE3 of the Nuneaton & Bedworth Borough Plan 2011-2031 (the Borough Plan) as part of the appeal proceedings. Moreover, the applicant claims that Policy BE3 is not relevant to the determination of the appeal.
6. The appellant also claims that the Council has added new evidence in referencing other sections of the Nuneaton and Bedworth Borough Council, Sustainable Design & Construction Supplementary Planning Document 2020 (SPD) and that the Council have relied on vague and generalised assertions in the separation distances they relied on and in discounting the appellant's need for additional storage.

¹ Paragraph: 047 Reference ID: 16-047-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

7. The Council contend that as Policy BE3 was referred to on the second page of the decision notice it was clear that the reason for refusal also related to this Policy.
8. However, the reference to Policy BE3 on the decision notice is a general summary of the policy and is after the decision date and authorising signature. It is not clear to the reader that this policy forms part of the reason for refusal. Furthermore, there is no detail on page 2 of the decision notice as to why the proposal fails to comply with Policy BE3 of the Borough Plan.
9. As detailed in my formal decision, albeit that it is not referred to in the reason for refusal, I have considered the proposal against Policy BE3 of the Borough Plan in that it provides an overarching policy against which to consider development. Moreover, Policy BE3 is supported by the guidance in the SPD, which is referred to in the reason for refusal.
10. It is, however, clear from the recommendation of refusal in the officer report that the Council considered Policy BE3 relevant to the determination of the application. The appellant should have considered the contents of the officer report as well as the decision notice before submitting their appeal and this policy has not been raised belatedly by the Council.
11. That Policy BE3 was not specifically referred to in the reason for refusal has resulted in some degree of unreasonable behaviour. However, as the Policy was referred to in the officer report, I find that the Council has not introduced fresh evidence at a late stage. Moreover, the addition of Policy BE3 is not substantial new evidence. The addition of Policy BE3 in the Council's Statement of Case does not, therefore, justify an award of costs.
12. The Council, within their statement of case, has clearly set out the reason for not placing greater weight on the appellant's need for the additional storage and has referred to the previous appeal decision on the site. The Council have, in regard to need, not relied on vague, generalised, or inaccurate assertions about the proposal. In this regard I find no evidence of unreasonable behaviour.
13. With regard to the issue of the separation distances and the introduction of additional sections of the SPD by the Council, I note that the appellant introduced the separation distance in their statement of case. The Council was responding to the appellant's evidence and brought in reference to the SPD to support their case. Although the appellant was not aware that this section of the SPD would be referred to by the Council it was the appellant that introduced the separation distance.
14. I, therefore, find that the Council has not acted unreasonably in regard to the appeal. As such, there can be no question that the applicant incurred unnecessary or wasted expense in the process of the appeal.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated, thus the award of costs is not justified.

K Townsend

INSPECTOR