



Costs Decision

Inquiry held from 30 April to 3 May and from 8 to 10 May 2024

Site visits made on 29 April and 10 May 2024

by David Cliff BA Hons MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05/07/2024

Costs application in relation to Appeal Ref: APP/V1260/W/23/3334527 Land south of Gillett Road, Talbot Village, Poole, Dorset, BH3 7AH

- 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 Talbot Village Trust and Nuffield Health for a full award of costs against Bournemouth Christchurch and Poole Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of its decision within the prescribed period on an application for part outline and part full planning permission for: 'Hybrid application: Full - Construction of a new 60,606 sq metre Nuffield Health Hospital with provision of access, servicing and car parking, cycle and pedestrian provision and landscaping. Outline - Provision of 13,394 sq metre of employment, healthcare and university-related floorspace, including ancillary uses and a Growing Hub. Change of use: Of 12 hectares of grazing land to create a Heathland Support Area for the lifetime of the Innovation Quarter.'
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Decision

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

Preliminary matter

2. As noted above, the appeal was against the failure of the Council to issue a notice of its decision within the prescribed period. For the avoidance of doubt, where I refer below to 'reason for refusal' this relates to the Council's reasons for refusal as set out in its Statement of Case had it been in a position to determine the application.

The submissions for Talbot Village Trust and Nuffield Health

3. The application for costs was provided in writing. I have summarised the main points below.
4. In relation to the first main issue (ecology) the applicants consider that the Council has been unreasonable in seeking to depart from the clear advice of Natural England, its own biodiversity officer and other consultees, without any positive evidence of harm or alternative appropriate assessment being undertaken and by relying upon vague and unsupported assertions of harm instead.
5. In respect of the second main issue (parking) the applicants consider that the Council has departed from its reason for refusal in this respect and has failed to substantiate the reason its objection which it states ought to have been withdrawn.

6. In relation to the third main issue (university links) the applicants consider that the pursuit of this reason in the face of clear evidence of links which in any event are not required by policy is completely unreasonable and that the Council's case on this matter is unsubstantiated with vague assertions rather than positive evidence.
7. The applicants therefore consider that the Council has unreasonably prevented development that should clearly be approved.

The response by Bournemouth, Christchurch and Poole Council

8. The Council also provided a copy of its response in writing and the main points are also summarised here. In general terms, the Council considers that this did not feel like a 'costs' inquiry. It states that Members are entitled to take a position against the advice of their officers.
9. On ecology, the Council considers that it has provided cogent and compelling reasons to depart from the views of the statutory consultee. It states that the applicants have failed to grasp the substantive issues that have been raised and that the Council has provided convincing and thought-provoking evidence, as to the uncertainties in the applicants' proposals.
10. On parking, the Council states that it is not accepted that there has been any departure from its reason for refusal on this matter. It considers that the applicants have not seemed to take on board the purpose and justification for the optimal parking standards. The significant overprovision of parking spaces has not been justified and should be on the evidence significantly less.
11. On university links, the Council argues that once the policy is approached on the correct basis, as clearly set out in the Council's evidence, it is a matter for the decision maker as to what evidence is required to demonstrate the required link, as addressed, explained and justified by its witness on this matter. Although the reason for refusal only related to the hospital and not the remained of the scheme, that does not mean that the need for the hospital to comply with Policy PP21 of the Poole Local Plan 2018 does not apply.

Reasons

12. 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.
13. The applicants generally draw attention to advice from Council officers to Members, including with reference to advice from Counsel, regarding the prospect of any success at appeal and resultant costs implications. Nevertheless, this advice was provided before the Council's witnesses prepared and provided their detailed evidence for the Inquiry. It remains necessary to consider the substance and facts of both cases regarding costs following the giving of evidence. I set out below my considerations in this regard.

Ecology and green infrastructure

14. Although the research presented to the Inquiry on heathland impacts identifies residential development as a key contributor towards heathland degradation, this does not mean that adverse effects from other forms of development are

not possible where they are in close proximity to the heathland. This is recognised by the supporting text¹ to Policy PP32 of the Poole Local Plan 2018. Indeed, the applicants also identify likely significant effects in the absence of mitigation. Local Plan Policy PP21 also requires that all development proposals within Talbot Village must contribute towards mitigation measures to ensure no adverse impact upon Talbot Heath. Furthermore, there is an agreed acceptance that, even with the Habitats Regulation Assessment (HRA) carried out in association with the site allocation, a further HRA would be required for individual proposals.

15. Consequently, even with the lack of any objection from Natural England and the great weight this carries, and from other consultees, a thorough assessment of the current proposals is required, including the detail of the how the Heathland Support Area (HSA) would work in practice in relation to the proposed and existing development.
16. The Council's evidence in relation to potential effects on the protected habitats and what the Council considers to be the uncertainties in the applicants' proposals, is substantial in form, has included its justification and has required careful consideration as part of my determination of the appeal. Notwithstanding my final conclusions on this issue as set out in my separate appeal decision, it has also highlighted some inconsistency in the appellant's approach, most notably the evidence for the applicants of Ms Alker regarding the use of the HSA and its relationship with the proposed innovation quarter and hospital uses. Furthermore, evidence such as that regarding the potential access to the heathland via Talbot Way has required careful consideration.
17. There is no need for the Council to provide an alternative appropriate assessment in support of its argument at appeal, as this is the role of the decision maker as the competent authority.
18. Whilst the conclusions in my decision to allow the appeal go against the Council's arguments on this issue, this is not a case where I consider that the Council has failed to provide evidence to substantiate its objection or where it has generally made vague, generalised, or inaccurate assertions about the proposal's impact that are unsupported by any objective analysis. The Council has not therefore behaved unreasonably in this regard.

Hospital car parking provision

19. Whilst the Council's evidence is clear that no harm would result in relation to highway safety or local highway conditions, it maintained its objection that the overprovision of car parking for the proposed hospital would undermine the achievement of sustainable methods of transport. I consider that there is no contradiction with its reason for refusal in this regard, as the amount of parking for the proposed hospital would not support the effective delivery of sustainable transport measures by encouragement of walking, cycling and public transport. I am satisfied that there has not been any significant departure from the Council's reason for refusal.
20. My appeal decision, after consideration of the evidence of both main parties, including the substantive evidence from the Council, concludes that the over provision of parking beyond the optimum standards in the Parking and Highway

¹ Paragraph 9.48

Layout in New Development Supplementary Planning Document (SPD) has not been robustly justified and would not provide a suitable level of restraint to encourage users of alternative methods of transport. Hence it would be contrary to the relevant Local Plan policies and the aforementioned SPD. Whether this would translate into the unacceptability of the entire scheme is not of central importance to the reasonableness of the Council's case for this costs decision, as that is a matter that I have taken forward, in my appeal decision, to the overall planning balance. In this context I have found that the harm arising carries moderate weight against the proposals.

21. I am therefore satisfied that the Council has adequately produced evidence to substantiate and justify this reason for refusal and I find unreasonable behaviour not to have occurred.

Support for role and function of the universities

22. The first paragraph of Local Plan Policy PP21 states that the allocated land at Talbot Village provides the opportunity to deliver major growth of the universities. It then goes on to make provision for this in part 2(a) through an expansion of both universities in area TV1 on or adjacent to the existing university campuses. The proposals relate to the separate part of the allocation (TV2) on land at and around Highmoor Farm to help support the role and function of the universities.
23. Neither Policy PP21 nor the Talbot Village SPD (2015) set out any specific detail of particular provisions or agreements that need to be entered into between proposed development and the universities. Rather the policy states that growth at Talbot Village will be carefully developed to deliver (amongst the other elements) an innovation quarter 'to help support the role and function of the universities'. It is pertinent that both Local Plan Policy PP21 (2)(b) and the Talbot Village SPD² include a health care facility as an appropriate use for the site, with an explanation that this may include a private hospital. The SPD also states³ that the master plan remains flexible about the final mix of uses. I consider the policy requirement of PP21 and the aforementioned SPD to be clear in the form of uses that may be acceptable under PP21(2)(b)
24. There is no requirement within the policy or SPD to provide evidence of a link, the stated uses being such that they would be likely, by their nature, to support the role and function of the universities. As I set out in my decision, the co-location of the hospital with the university, bearing in mind the linkages and relationships that are likely to flow between the two, would ensure that the hospital would support the role and function of the universities.
25. It is also relevant that the Council agreed, in its Statement of Common Ground with the applicants, that the outline element of the scheme would support the role and function of the universities as set out within Local Plan Policy PP21(2)(b). There is no clear justification to demonstrate why the proposed hospital is being treated differently in this regard.
26. I therefore find that the Council has sought, in pursuing this reason for refusal, to introduce a further layer of requirements that do not exist and are not required by policy.

² Paragraph 6.9.4

³ Paragraph 6.9.5

27. This amounts to a failure by the Council to provide evidence to substantiate this reason for refusal and to a vague and generalised assertion about the proposals in this respect, which is unsupported by any objective analysis. This unreasonable behaviour has resulted in the appellants incurring unnecessary expense in contesting this part of the Council's objections.

Conclusion

28. For the reasons given above, unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has occurred in respect of the Council's reason for refusal regarding Local Plan Policy PP21(2)(b) and support to the role and function of the universities. A partial award of costs is therefore warranted.

29. I have not found unreasonable behaviour in respect of the other matters raised by the applicants. As such, whilst a partial award of costs is justified, this is not a case where the Council has prevented or delayed development which should clearly be permitted.

Costs Order

30. 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 Bournemouth, Christchurch and Poole Council shall pay to Talbot Village Trust and Nuffield Health, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in connection with contesting 'Reason 3' set out in paragraph 1.2 of the Council's Statement of Case regarding whether it has been demonstrated that the proposed hospital would help support the role and function of the universities, having regard to Policy PP21 (2)(b) of the Local Plan. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.

31. The applicants are now invited to submit to Bournemouth, Christchurch and Poole 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.

David Cliff

INSPECTOR