



Costs Decisions

Hearing held on 25 June 2024

Site visit made on 25 June 2024

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th August 2024

Costs application in relation to Appeal A Ref: APP/U4610/W/24/3340509 Telephone Repeater Station, Fletchamstead Highway, Coventry CV4 7BB

- 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 Mr Parminder Bal for a full award of costs against Coventry City Council.
- The appeal was against the refusal of planning permission for change of use and refurbishment of a former BT repeater station to provide 10 bed student accommodation scheme.

Costs application in relation to Appeal B Ref: APP/U4610/W/24/3337238 Telephone Repeater Station, Fletchamstead Highway, Coventry CV4 7BB

- 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 Mr Parminder Bal for a full award of costs against Coventry City Council.
- The appeal was against the refusal of prior approval for change of use of a Class E Music Recording Studio to a single dwelling.

Decision

1. The application for an award of costs in relation to Appeal A is refused, and the application for an award of costs in relation to Appeal B is refused.

The submissions for Mr Parminder Bal

2. A written application for costs in relation to Appeal A was made in advance of the Hearing. It is not necessary for me to repeat here the points made in that written submission. An additional oral submission was made at the Hearing that extended the application made in relation to Appeal A and introduced an application for costs in relation to Appeal B. The following points were alleged:
3. *As regards the Appeal A application, the highways reason for refusal is unsubstantiated and follows an erroneous application of the fallback position. The correct lawful approach would have been to treat the baseline use as a Class E use. Possible uses within Class E should have been taken into account by the Council, as opposed to the de facto intensity of the use of the site historically. A suggestion that the appeal scheme would re-introduce vehicle movements is entirely misplaced, especially where the appellant's evidence indicates a reduced level of vehicle movements compared to the fallback position. There is nothing other than a betterment in highway impact terms. The Council's criticism appears based on a lack of data that does not exist, as opposed to the appellant's methodology, such that a refusal on this basis is unjustified and unreasonable.*

4. *As regards the Appeal B application, in relation to the reason for refusal that relates to noise impacts, the Council conceded at the Hearing that it was erroneous to take into account highway noise. The Council also accepted at the Hearing that the sequential test does not apply and that a condition is acceptable in light of the additional drainage information provided. A methodological argument with respect to the Flood Risk Assessment (the FRA) was not raised in the Council's Statement of Case. Therefore, the highways reason for refusal is unsubstantiated (with reference to the additional points alleged on the Appeal A application) and the remaining reasons for refusal have fallen away. Thus, Appeal B should never have been refused.*

The response by Coventry City Council

5. A response in writing to the written application for costs in relation to Appeal A was made in advance of the Hearing. It is not necessary for me to repeat here the points made in that written submission. An oral response was made to the additional oral submission at the Hearing, where it was set out as follows:
6. *In response to highways matters relevant to both appeals, the Class E lawful use has been continually accepted and acknowledged by the Council, as has the likelihood that the proposed uses could theoretically generate fewer vehicle trips when compared to the lawful permitted use. The evidence provided confirms that the site has not been in operation for several years, therefore the proposals would introduce vehicle trips to and from the site. Whilst the site has the fallback position of a Class E use, it has not been demonstrated that the site has operated within this permitted use class. The appellant argues that they do not have the data available to demonstrate the proposed uses can operate safely, yet they expect the Council to accept the proposals without this information and evidence. Whilst it is the appellant's argument that the proposals could offer betterment to highway safety, this is only theoretically.*
7. *As regards Appeal B specifically, it is accepted that Class MA relates specifically to noise arising from commercial premises. Whilst there are noise issues at this site, these do not arise from a commercial source. This interpretation was not alluded to in the appellant's submissions on the Class MA application, nor in the subsequent appeal documentation. It is accepted that the sequential test is not applicable under Class MA, yet associated drainage and flood risk considerations are relevant. Minimal evidence was provided for consideration at the time of the Council's determination, notably the FRA had not been produced. It is only with the additional evidence provided as part of the full application and the subsequent appeals that further consideration has been given. Concerns remain as regards a change to a more vulnerable use, although conditions could now be explored if all other matters are addressed. This, however, was not the case at the time of the Council's determination.*

Reasons

Introduction

8. Parties in planning appeals normally meet their own expenses. However, 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.

Appeal A

9. The applicant has alleged that the Council behaved unreasonably by failing to justify each of its reasons for refusing planning permission, and by making vague, generalised, and inaccurate assertions about the scheme's impacts.
10. With respect to the first three reasons for refusal, it shall be seen from my planning decisions that I have respectively identified that the proposal would be unacceptable in a flood risk sense, that acceptable living conditions would not prevail due to noise effects, and that an unacceptable harmful effect upon highway safety would be caused.
11. Whilst I have identified that a fit-for-purpose solution for managing both surface and foul water could be found at the site, this was in lieu of a Drainage Appraisal submitted at appeal stage and discussion that took place at the Hearing. It was therefore reasonable for drainage concerns to be encapsulated within the Council's first reason for refusing planning permission.
12. For the avoidance of doubt, an erroneous application of the fallback position with respect to highway considerations has not been clearly demonstrated. Indeed, it was reasonable to factor in the manner in which the site is currently operated, and it was fair for theoretical predicted trip figures to be treated with caution. This was particularly so in the absence of specific details pertaining to any future potential occupier with a live interest in the site. Further, consistent with my own findings, it was reasonable for the Council to raise concerns with respect to the enforceability of car free development and the safety implications of manoeuvring vehicles on-site.
13. Based on the above commentary, it follows that each of the Council's first three reasons for refusing planning permission were reasonable and suitably justified.
14. As regards the Council's fourth reason for refusal, it shall be seen from my planning decisions that, with respect to Appeal A, I have identified that satisfactory access to light would prevail for potential future residential occupiers. However, due to the presence of dense established planting, and when noting that a supporting Daylight and Sunlight Assessment (February 2024) was submitted only at appeal stage, it was not unreasonable for the Council to refuse planning permission based on concerns associated with access to natural light.
15. In terms of the fifth reason for refusal, I have found that it has been satisfactorily demonstrated that the proposal would have an acceptable effect upon existing trees and biodiversity. Nonetheless, as was apparent upon inspection, there remains clear potential for the scheme to have implications for established trees situated in proximity to the appeal building. It is also relevant here that there are material differences when the Appeal A proposal is compared to that considered by a previous Inspector in 2022, including with respect to building height.
16. An Update Letter of Ecological Assessment (February 2024) identifies that no ecologically significant change has occurred to the site since it was last surveyed in 2020. However, this update letter was not before the Council when it resolved to refuse planning permission. I further note that the Council's objections/concerns in the context of its fifth refusal reason have

been supported by the observations of its own technical specialist consultees at both application and appeal stage. Accordingly, I do not find the Council's imposition of its fifth refusal reason to represent unreasonable behaviour.

17. I have had sight of an emailed request¹ for the Council to reconsult at application stage based on resubmitted reports and accompanying written points of clarification. However, it has not been clearly demonstrated that previously submitted evidence had been missed or ignored by technical consultees, nor that further consultation at application stage would have resolved objections and/or necessarily led to fewer refusal reasons being imposed. As a further point, notwithstanding its duty to approach decision-making in a positive and creative manner, the Council was not obliged to request additional documentation at application stage.
18. Notwithstanding the absence of any explicit reference to the scheme's public benefits within its Officer Report, the Council identified various harms and associated policy conflicts to fairly justify its decision to refuse planning permission. As a final point of clarity, as shall be seen from my planning decisions, compliance with Policy H10 of the Coventry City Council Local Plan (December 2017) does not equate to accordance with the development plan when read as a whole.

Appeal B

19. It has been alleged that the application that is the subject of Appeal B should never have been refused. The reason for refusal refers to objections/concerns in the contexts of flood risk, highway impact, and noise impact.
20. In terms of flood risk considerations, it is the case that very limited associated information was before the Council when it resolved to refuse to grant prior approval. Indeed, the FRA pertaining to Appeal A had not yet been produced and no clear indication of how surface water might be managed at the site had been provided. In view of the site's Flood Zone 2 classification and potential vulnerability to flooding, it was not unreasonable for the Council to reference the Lead Local Flood Authority's objections in its reason for refusal. This is notwithstanding the lack of applicability of the sequential test. It should also be noted that, with reference to my decision to allow Appeal B, I have imposed a condition securing a scheme of flood resistance/resilience measures. This reflects the site's sensitivity in a flood risk sense as well as discussions that took place at the Hearing.
21. With respect to highway impact, it shall be seen from my planning decisions that I have found that the introduction of a single dwelling to the site would result in an increase in vehicular trips when compared to current circumstances. In this context, especially when factoring in the busy multi-lane nature of Fletchamstead Highway and on-site manoeuvrability constraints, it was not unreasonable for the Council to refer to Local Highway Authority objections in its reason for refusal. Whilst I identified the applicant's fallback position to be an important material consideration in the case of Appeal B, the Council was not obliged to come to the same finding following its own assessment of the submitted supporting evidence. Moreover, the level of relevance/weight to be apportioned to this acknowledged fallback position was a matter of planning judgement.

¹ dated 9 January 2024

22. It was conceded by the Council at the Hearing that noise arises from the highway as opposed to from commercial premises, such that noise impact concerns fall beyond the remit of the relevant prior approval provision. It thus follows that it was unreasonable for the Council to reference insufficient noise pollution information in its refusal reason. Nevertheless, for an award of costs to be justified, it must be demonstrated that identified unreasonable behaviour has led to unnecessary or wasted expense being caused at appeal stage.
23. In this instance an appeal would have been required even had noise impact concerns not been raised by the Council. It is also the case that only a small proportion of the applicant's Appeal Statement for Appeal B is dedicated to specifically addressing noise concerns. Indeed, no additional technical reports have been produced at appeal to specifically address Appeal B noise matters. As such, substantive additional wasted expense at appeal stage has not been clearly demonstrated.

Conclusion

24. For the above reasons, in the cases of both Appeal A and Appeal B, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred. As such, no award of costs is warranted. Moreover, with respect to both appeals, development was not prevented or delayed that should clearly have been permitted/consented.

Andrew Smith

INSPECTOR