



Costs Decision

Hearing held on 17 April 2024 and 12 July 2024

Site visit made on 12 July 2024

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 09 September 2024

Costs application in relation to Appeal Ref: APP/M0655/W/23/3329902 Land south of 2 Cuerdley Road, and west of Cuerdley Road, Penketh WA5 2TY

- 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 Messrs Z and D Tourney for a full award of costs against Warrington Borough Council.
 - The appeal was against the refusal of planning permission for a residential redevelopment of land for between 5no. and 9no. affordable dwellings following demolition of existing buildings, together with associated infrastructure works and access(es) onto Cuerdley Road.
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Decision

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

The submission and responses

2. The application for costs was made in writing prior to the resumed Hearing. Due to time constraints on the day, the main parties agreed to make responses to this in writing after the resumed Hearing had closed. There is therefore no need to rehearse the cases of the parties.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
4. The PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal or if they rely on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. Given my conclusions in respect of securing and delivering affordable housing I am unable to find that the Council considered a range of factors that were too detailed and early for the PIP stage. Whilst there was disagreement in respect of whether the appeal site was previously developed land there is little before me to suggest that the Council failed to apply the definitions of Annex 2 of the National Planning Policy Framework.
6. At the Hearing the Council accepted that Local Plan Policy DC6 was not a development plan policy that I needed to have regard to in respect of the main

issues of the case, and that details of design were for TDC stage.

I appreciate that this policy superseded Policy QE7 of the Adopted Local Plan Core Strategy 2014 which appeared on the decision notice. However, the application of this policy or matters of design and layout were not something that the Council substantially relied upon in its case.

7. Given the indicative nature of the scheme, I was unable to find the Council's Head of Housing's opinion in respect of viability to be inaccurate, vague or generalised. I am also satisfied that the Council's evidence clearly sets out a planning balance and explains why very special circumstances did not exist to justify the proposed development. As such I am satisfied that it provided adequate evidence to substantiate in all respects its reasons for refusing planning permission.
8. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG advises that a partial award of costs may be awarded where, for example, an unnecessary adjournment is caused by the unreasonable conduct of one of the parties. In such circumstances, the award of costs may be limited to the abortive costs of attending the event on the day of the adjournment. A procedural award may also be made where (and the list is not exhaustive) there has been delay in providing information or other failure to adhere to deadlines, and introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
9. Whilst there was some toing and froing, the Statement of Common Ground (SoG) was agreed and signed by both main parties prior to the Hearing on 17 April 2024. However, there was a change in circumstances, with planning permission Ref: 2023/1138/FUL being granted in the time between the adjournment and the resumed Hearing. Given the clear divergence in the cases of the 2 main parties regarding whether this permission had been implemented, and in respect of previously developed land, it is understandable that this was not agreed in an updated SoG. In any event, the information submitted in respect of these matters, and relevant development plan policies, has to be considered at the time of making the appeal decision. As such, it is not clear how any additional expense has been incurred by the applicant on account of the alleged failure to cooperate.
10. Although the Council's Head of Housing implied on the day of the adjourned Hearing that he had additional evidence that he wished to discuss, he chose not to submit this. Moreover, this was before it became apparent that the Council nor interested parties had seen the applicants' supplementary statement of case. It was therefore not the reason for the adjournment.
11. The Council's subsequent supplementary statement (CSS) may or may not have included this information, nonetheless, as previously mentioned, an appeal decision must be made taking into account national and local policies, and the broader circumstances in place at the time of the decision. I found the CSS to provide, in the main, updates and responses to the applicants' supplementary statement of case. Although the applicants made final comments in response to the CSS, they would have been given the opportunity to do this had the Council provided it prior to the Hearing. I am therefore not convinced that any extra expense for preparatory work has arisen due to the adjournment.

12. Nonetheless, as previously mentioned, it became clear at the Hearing that the Council had not had sight of the applicants' supplementary statement of case and had consequently not made this publicly available for interested parties to view on its website. Although the Council may not have initially been aware of the extended appeal timeframe, this would have become apparent had it seen the Council's supplementary statement of case, which was emailed to them well in advance of the Hearing. This document was sent to the Council's development control email address, which is common practice, and it is the Council's responsibility to check, and act upon the receipt of emails to this inbox. I consider to not do so, in this instance, constitutes unreasonable conduct that caused the adjournment of the Hearing.
13. Whilst I am also aware that the Council did not publish all of its evidence on its website until a few days before the resumed Hearing, I am satisfied that nobody's interests have been disadvantaged by this error. A few emails were submitted by the applicants about this; however, I do not consider this to constitute unnecessary extra expense for preparatory work.
14. Drawing all of the above points together, I therefore find that the applicants' abortive costs of attending the event on the day of the adjournment were unnecessarily incurred. Unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has therefore been demonstrated and a partial award of costs is justified on this basis.

Costs Order

15. 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 Warrington Borough Council shall pay to Messrs Z and D Tourney, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to attending the event on the day of the adjournment.
16. The applicants are now invited to submit to Warrington Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Mark Caine

INSPECTOR