



Costs Decision

Hearing held on 1 October 2024

Site visit made on 1 October 2024

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Costs application in relation to Appeal Ref: APP/W2465/W/24/3345854 186 Welford Road, Leicester LE2 6BD

- 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 Kian Parmar on behalf of ASKKD Limited for a full award of costs against Leicester City Council.
 - The appeal was against the refusal of planning permission for demolition of existing warehouse and the construction of purpose built student accommodation (PBSA) comprising 50 no. studios (Sui Generis), reinstatement of crossing as footway, associated landscaping and erection of boundary treatments.
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Decision

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

Reasons

2. 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.
3. The applicant has alleged that the Council behaved unreasonably by – in summary – failing to positively engage at application stage, declining to disclose consultation responses in a timely fashion, failing to seek additional information in the interests of narrowing matters in dispute, failing to undertake objective analysis to substantiate refusal reasons, refusing planning permission on grounds capable of being dealt with by condition, failing to apply consistency in decision-making, and failing to cooperate and meet deadlines at appeal stage.
4. Whilst the applicant chose not to pursue pre-application advice from the Council, it was not obliged to do so and the Council's duty to approach decisions on proposed development in a positive and creative way remained. In this sense, it is concerning that the Council chose not to engage in any meaningful capacity until in a position to confirm the application would be refused and chose not to share a full suite of consultation responses until later still. That said, my attention is necessarily focussed upon the identification of any unnecessary or wasted expense incurred at the appeal stage of the process.
5. There was clear potential for matters in dispute to be narrowed had the opportunity for providing further submissions been offered. It is nevertheless

noteworthy that active and positive engagement at application stage would have been unlikely to lead to all the Council's far-ranging and often satisfactorily credible concerns being sufficiently resolved to enable the avoidance of an appeal altogether. This is without prejudice to the successful outcome of the planning appeal to which this costs application relates.

6. As regards daylight/sunlight matters, it was reasonable for the Council to impose its sixth reason for refusal based upon the information that was before it at application stage and in the context of additional built form being proposed when compared to development approved¹ at the site in December 2021 (the extant scheme). Moreover, evidence in this respect could not have been appropriately dealt with via condition. Thus, even though the Daylight and Sunlight Report (May 2024) (the Report) could have been submitted at an earlier stage in the process had the applicant been made aware of the Council's related objections, its production did not represent unnecessary additional expense.
7. On the basis that the Report is comprehensive, was produced in line with relevant guidelines, and draws clear conclusions, it was unreasonable for the Council to continue to defend its sixth refusal reason at appeal in the apparent absence of fair justification for doing so. Indeed, given the Report's detailed contents, it was neither fair nor reasonable to continue to insist upon the production of (a) further shadow diagram(s). However, whilst some Hearing time was taken up discussing daylight/sunlight matters, no substantive additional expense was incurred by the applicant as a consequence of the Council's unreasonable behaviour in this regard.
8. I note that up-to-date protected species survey work submitted at appeal led to the Council not defending its ninth reason for refusal. However, this work did not represent unnecessary expense because its submission would have been required in advance of planning permission being granted in any event.
9. In terms of the fifth reason for refusal, it is curious that the Council chose to resist the scheme in a noise and overheating sense. This is even though I am of the understanding that its Noise Team, at application stage, identified that the proposal, which is supported by a Noise Assessment Report (June 2023), did not address possible overheating and ventilation. Of pertinence here, upon the extant scheme, where Block A occupied an identical position relative to Welford Road, the Council resolved to impose a condition to secure details of noise, air quality and ventilation measures. Whilst overheating concerns have subsequently materialised, it is unclear what circumstances have changed to justify this new objection. In any event, as the matter is localised and related to Welford Road-fronting studios only, there was no fair reason to suppose commensurate protection measures could not be suitably conditioned. Thus, although limited Hearing time was dedicated to discussing such matters, the fifth refusal reason led to an Overheating Technical Note (May 2024) being produced at wasted expense.
10. Turning to the Council's eighth reason for refusal related to sustainable standards of construction, this would appear to stem from comments made by its Sustainability Officer in his role as an internal consultee at application stage. However, it is noteworthy that, with respect to the extant scheme, renewable energy and energy efficiency measures were secured via condition. Especially

¹ Ref: 20192082

as I am unaware of any material changes to relevant policy/guidance, there was no clear or convincing justification for the Council to have taken an alternative approach with respect to an appeal scheme that similarly entails site clearance and the construction of two new-build blocks. This is even whilst acknowledging the current absence of detailed roof plans. Moreover, even though discussions upon related matters still disputed by the Council were brief at the Hearing, the unreasonable imposition of the eighth refusal reason led to the unnecessary production of an Energy Assessment (May 2024) at appeal stage and thus to wasted expense.

11. It has been put to me that the Council failed to apply consistency in decision-making on the basis that it recently approved PBSA at a nearby site with 11 metre separation between five storey blocks. However, any proposal for development must be considered upon its own individual merits in accordance with the specific site and case circumstances to hand. Notwithstanding the successful outcome of the planning appeal to which this application relates, the Council was not duty bound to assent to a separation distance that was agreed on a site elsewhere with regard to comprehensive built development of a different composition and detailed design. I also note that broad and relatively lengthy analysis pertaining to separation distances is contained within the Council's Officer Report. I do not identify unreasonable behaviour in this respect.
12. Returning to the matter of application consultation responses being shared late in the process, the Council has accepted that responses from technical consultees were mistakenly not uploaded with its appeal questionnaire. Indeed, it was not until less than two weeks before the Hearing that such responses were eventually shared. Nevertheless, representatives of the appellant had ample opportunity to familiarise themselves with the content of said responses in advance of a Hearing where the principal focus of discussion was Main Issues formulated in response to the Council's formal reasons for refusal as listed on its Decision Notice. Having considered the content of the responses and their typical conformity with the Council's overarching objections/conclusions, I am satisfied that, in this instance, the appellant's case was not prejudiced by this late production of evidence and that unnecessary substantive expense was not incurred in this domain.
13. Multiple extensions to the deadline for submission of an agreed Statement of Common Ground (SoCG) were necessitated in advance of the Hearing. Having considered the respective submissions of the parties and a Timeline of Needless Delay produced by the applicant, I sympathise with the applicant's frustration. Moreover, notwithstanding its own misgivings with regard to what was an arduous process, the Council could have better assisted the process by responding to requests/correspondence in a consistently timely and constructive fashion. That said, a SoCG was ultimately agreed in advance of the Hearing in lieu of a seemingly more pragmatic approach having been adopted by the Council towards the end of the process. I am therefore unable to find unreasonable behaviour that led to unnecessary expense of a clearly identifiable and substantive nature.
14. I note that the process of agreeing draft conditions was also not swift, but a comprehensive list with comments was agreed in advance of the Hearing. I am content that the Council's behaviour was satisfactorily reasonable in this regard. Further, whilst there may have been initial reluctance to assist in

progressing a legal agreement towards finalisation in advance of the Hearing, any potential shortcomings in this respect were suitably rectified.

15. For the reasons given above, whilst a full award of costs is not justified, I have identified unreasonable behaviour that resulted in unnecessary or wasted expense being incurred with respect to contesting the Council's fifth and eighth reasons for refusing planning permission. A partial award of costs on these terms is therefore warranted.

Costs Order

16. 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 Leicester City Council shall pay to Mr Kian Parmar on behalf of ASKKD Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred by the applicant in contesting the Council's fifth and eighth reasons for refusing planning permission; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Leicester City 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.

Andrew Smith

INSPECTOR