



Costs Decisions

Site visit made on 20 January 2025

by **Ben Plenty BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 January 2025

Costs application in relation to Appeal A Ref: APP/P1805/W/24/3348078 rear of 17-19 Willow Gardens, BROMSGROVE B61 8QD

- 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 Bromsgrove District Housing Trust for a full award of costs against Bromsgrove District Council.
 - The appeal was against the refusal of planning permission for the demolition of existing garages and erection of new build dwelling including associated access and landscaping at rear of 17-19 Willow Gardens, BROMSGROVE B61 8QD.
-

Costs application in relation to Appeal B Ref: APP/P1805/W/24/3348079 rear of 8-14 Willow Gardens, BROMSGROVE B61 8QD

- 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 Bromsgrove District Housing Trust for a full award of costs against Bromsgrove District Council.
 - The appeal was against the refusal of planning permission for the demolition of existing garages and erection of new build dwelling including associated access and landscaping at rear of 8-14 Willow Gardens, BROMSGROVE B61 8QD.
-

Decisions

1. The applications for awards of costs, in association with Appeal A and B, are allowed.

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. The PPG explains that a Council may be vulnerable to costs if it has unreasonably refused a planning application. This states that unreasonable behaviour could include where a Council has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations or has made Vague, generalised or in accurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. Applications for costs have been made by the appellant against the Council's refusal of both schemes subject to appeals A and B. As the costs applications make the same assertions for both schemes, I shall consider these together.

4. The costs applications essentially allege that the Council did not pay regard to the advice of the Highway Authority, has provided unsubstantiated reasons for refusal and made decisions in an inconsistent manner to a previously approved scheme at 3A Willow Road.

Highway Authority advice and unsubstantiated reasons for refusal

5. Extensive objection from residents, against both schemes, informed Planning Committee as to the strength of opinion against the loss of the parking courtyards. Residents submitted photographic evidence of existing parking pressure on Willow Gardens. Parking pressure in proximity of the access points to both sites is high and ad hoc with parking on grass verges taking place. It is understandable that a proposal that seeks to remove off-street parking capacity from the area would lead to concern from the local community. However, the parking proposed to be removed is within two areas of private land and could be closed off at any time, irrespective of the outcome of the planning applications.
6. Quite correctly, the Council makes the point that the Planning Committee is not obliged to accept recommendations put forward by its officers. However, the PPG is clear that a Council would need to demonstrate that it exercised its duty to determine an application in a reasonable manner to successfully defend an application of costs.
7. The highway related evidence submitted by the appellant, during the Councils consideration of both proposals, was extensive in comparison to the scale of development proposed. This included a detailed Technical Note on highway matters and a car parking survey.
8. Members were concerned about the effect of both schemes on the known parking problems in the area and that the proposal would deprive residents of car parking spaces. However, the minutes of the Committee meeting of April 2024, explained that the applicant had undertaken a car parking survey showing that the displaced parking could be accommodated on-street finding spare capacity. Officers showed Members a street view of the area using Google Maps, although the purpose of this or what it might demonstrate was not recorded in the minutes. Members resolved to defer both applications to allow an officer from the Highway Authority to attend and provide advice.
9. At the Planning Committee meeting of May 2024, the minutes demonstrate that Members heard from a local ward councillor, two residents and a representative of the appellant. Also, Members heard from the Highway Officer who stated that following his most recent visit to the sites, 12 of the garages were in use and there were 28 free spaces available on-street, and reaffirmed he had no objection to the scheme. Members expressed concern as to the capability of access to serve emergency vehicles in case of fire. Officers stated that the fire service was not a statutory consultee, but Members disagreed with this assertion. Members also noted the absence of an extensive parking impact assessment to consider the available parking in the area. It was decided that additional information was unnecessary, and the applications were refused.
10. The minutes do not indicate that Members undertook a site visit or heard alternative technical advice as to the operation of the access points. The Council has not therefore explained, in the minutes or its statement of case, what enabled Members to decide that the access points would be unsafe or that the local highway network

would suffer a severe impact as advanced in its reasons for refusal. It is especially difficult to understand why the access points would achieve unsafe visibility splays based on the former use of the sites that would have included far more traffic movements as communal garaging. As such, the evidence before me does not explain how Members reached a contrary view to the conclusions of the technical evidence and highway advice it was given on this matter.

11. Furthermore, I note that the fire service is not a statutory consultee under the consultation requirements of Schedule 4 of The Planning (General Development Procedure)(England) Order 2015. In my main decision I remarked that a sprinkler system would be incorporated into the design, to secure Building Regulations approval, addressing the inability of a fire tender to access either site. This seemed to be a reasonable response to the context of the site in minimising fire risk.
12. Accordingly, based on the evidence before me, it has not been demonstrated that the Planning Committee arrived at a reasonable or reasoned contrary view to the expert advice it was given with respect to highway matters. Consequently, in refusing both proposals the Council has delayed development which should, based on the available evidence, have clearly been permitted. Furthermore, it has made vague, generalised and inaccurate assertions about the impact of both proposals which have been unsupported by objective analysis. This action amounts to unreasonable behaviour.

Inconsistent decision making

13. The approved dwelling at 3A Willow Road gained planning permission in 2010. Whilst this is a decision made some time ago, the applicant points out that there have been no changes in the principles of the relevant policies (both local and national), highway safety standards or planning, environmental or design principles. The Council suggests this decision was taken in a different policy environment, but has not explained where policy has materially changed in relation to the proposal. It is noted that parking pressures may have increased in the intervening 14 years, but as I have found in my main decision, this matter does not have a direct bearing on the main issues of either proposal. Although each case must be considered on its own merits, this inconsistency also lends support to the notion that the Council has behaved unreasonably in these cases.

Conclusion

14. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the PPG, has been demonstrated. Consequently, an award of costs, to cover the expense incurred by the appellant in preparing and submitting an appeal against the reasons for refusal, is justified.

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 Bromsgrove District Council shall pay to Bromsgrove District Housing Trust, the costs of the appeal proceedings, with respect to both appeals, described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Bromsgrove District 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.

Ben Plenty

INSPECTOR