
Costs Decision

Hearing held on 6 February 2025

Site visit made on 7 February 2025

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Costs application in relation to Appeal Ref: APP/M0655/W/24/3352794

The Poplars, Cotswold Road, Poplars and Hulme, Warrington WA2 9SG

- 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 Warrington Borough Council for a full award of costs against Mr C Buckley, K&L Properties Ltd.
 - The hearing was in connection with the appeal against the refusal of planning permission for demolition of existing public house. Construction of 14 dwellings with new access and car parking.
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Decision

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

The submissions for Warrington Borough Council

2. The costs application was submitted in writing prior to the hearing and is based upon the proposition that the appeal could never have succeeded due to the failure of the appellant to address key development plan policies of the Warrington Borough Council Local Plan 2021/22 – 2038/39, 2023 (the LP) as well as mandatory requirements for development.
3. At the hearing the applicant added in summary, that it would be for the appellant to source their own viability report and costs. The supplementary planning documents are clear, and the appellant has tried to confuse matters to negotiate instead of providing suitable information or answers.
4. The matter of extensions of time are for the Council to determine as the submissions on the application were poor including viability, and to seek to justify this the appellant has made an appeal. They have ignored policy requirements including any s106 mechanism, and no pre-application advice was ever sought which could have identified concerns at an early stage, avoiding the committal and costs to the Council. Thus, the 9 reasons for refusal have been justified.

The response by Mr Buckley, K & L Properties

5. The response was made orally by the appellant's representative agent (the respondent) at the hearing with a handwritten copy provided.
6. In summary, the respondent argued that the application and the appeal are both submitted with submissions which address development plan policies and other material considerations. They contend the position of the Council is incorrect that policy has been ignored, whilst generally showing a lack of consideration for effective resource use.

7. It was set out that there have been issues in securing a competent person to advise on viability. The appellant was also aware of the likelihood of being asked to fund a re-appraisal of viability, and that the Council will only accept the views of those appointed by them.
8. In relation to Biodiversity Net Gain (BNG), they contend the Council took 3 weeks to validate the originally submitted application. There were no discussions over the position of the application having regard to BNG other than those at the validation stage.
9. There were several requests from the agent with the case officer to seek discussions over gaps in the submission with the expectation that these would have resolved many issues on the scheme and allowed substantial modifications to the proposals. This would have been consistent with the requirements of the National Planning Policy Framework (the Framework) relating to the purpose of the planning system to promote sustainable development and to contribute to the provision of homes. The actions of the Council have therefore been entirely negative towards the development.
10. On the 12 April 2024, the case officer indicated they were open to discussions relating to highway concerns, this was used as a reason for questioning the value of ongoing discussions. What followed was a longer list of issues identified generally, but were not matters of principle which some could have been dealt with by conditions, others by responses to specific issues.
11. It was claimed it was not clear why the Council did not grant an extension of time, in line with their document on this. The decision to refuse the application and the subsequent need to appeal seems to reflect concern over performance targets as opposed to the decision-making expectations in the Framework.
12. The following additional points were made orally, that there are lots of policy claims which are flawed and there has been confusion from the Council not the appellant on several matters, including at the beginning of the application. There was no consistency as to how the Council behaved and the refusal was hasty with ample scope to grant planning permission for the development.

Reasons

13. 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.
14. The PPG states that awards may be either procedural, in regard to behaviour in relation to completing the appeal process, or substantive, which relates to the planning merits of the appeal. For substantive awards which the applicant is claiming in this instance, the rights of appeal should be exercised in a reasonable manner and an appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding.
15. The PPG sets out, although not exhaustive that this may occur when the development is clearly not in accordance with the development plan, and no material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material

considerations are advanced, there is inadequate supporting evidence, and lack of co-operation on any planning obligation.

16. The Council's reasons for refusal No.1 and No.2 relate to affordable housing, housing mix, provision of accessible and adaptable dwellings, viability and new social and community infrastructure (education). The relevant policy and requirements criteria are set out in Policy DEV2 of the LP.
17. The appellant submitted a viability report as part of the planning application and appeal. This appraised 12 dwellings and not 14 dwellings as were proposed in the scheme. The viability assessment was reviewed independently by a consultant that the Council appointed. It was found that the proposal would be viable for the affordable housing contribution of 30% in accordance with Policy DEV2, it was further found that a social and community infrastructure contribution would be viable relating to education, and it contended the viability assessment by the appellant was not carried out in accordance with RICs and the PPG.
18. Despite, the challenges the respondent claims they had in securing a revised viability assessment, a revised appraisal for the correct number of dwellings was not forthcoming at both the planning application stage and when the appeal was submitted. The onus is on the appellant to provide the correct information to support their application and/or appeal, and this on its own would not necessarily justify that an extension of time should be secured. Therefore, I do not consider that the appellant reasonably exercised their right to appeal by including the wrong and unsupported viability assessment for the proposed scheme.
19. Moreover, the assessment methodology and requirements to be included in a viability assessment and its demonstration in delivering housing development in accordance with national and local planning policy is clearly set out in the Framework and the PPG. The appellants position, which is set out in the formal decision includes that the Council would be able to do a simple calculation of 2 more dwellings from the document is simply unrealistic.
20. Even if, the appellant considered the scheme was unviable to support affordable housing or other infrastructure contributions no mechanism was then provided to secure any future review of viability, as set out in LP policy INF5 and the Planning Obligations SPD. A request in the pre-hearing note, dated 27 January 2025 which was sent advised that if the appellant intends to submit any draft s106 /planning obligation, this should be provided and advised on the requirement that it should normally be no later than 10 working days before the event opens and completed by the end of the event.
21. It appears further that the Council tried to engage on the matters at the time of the appeal on securing a review mechanism as set out in the statement of common ground and their written and oral evidence. None was received, and the respondent in the hearing made their intentions clear they did not intend to submit one.
22. The requirements for housing type and tenure as set out within LP Policy DEV2, are an evidential based policy arising from the Local Housing Needs Assessment, informed on a Borough wide basis. The appellants submissions on this matter are limited, which I have set out in the formal decision, and no substantive justification or material considerations have been provided to justify the proposed 100% 3-bedroom dwellings, when it was evident there was a greater need and evidenced in policy the area required a mix of 2–3-bedroom dwellings.

23. The requirement for new dwellings and the percentage required for accessible and adaptable dwellings relating to Building Regulations Standards M4(2) and M4(3) is within policy DEV2 of the LP. The appellant in their written evidence contend that this is an unnecessary duplication of other regulatory controls. Evidence heard orally, clarified that the proposal and plans, which accompanied the planning application and appeal at present do not comply with the requirements. These would potentially require internal and external layout configurations to change, resulting in a substantive change to the proposal presented. Therefore, the scheme would not comply with policy requirements and there were no material considerations advanced including those relating to viability presented.
24. In relation to reason for refusal No.8 on sustainable urban drainage systems (SuDS) and insufficient information. The appellant's statement of case indicates that they were unsure of what further information would be required as they had submitted plans and documents relating to drainage at the site. They considered that any further investigations at this stage would be excessive, and drainage matters could be dealt with by conditions, which was the maintained position at the hearing.
25. However, LP Policy ENV2, the Framework and the PPG is clear in terms of what is required at design stage and on submission of a major planning application. Therefore, I consider that the appellant has misunderstood the requirements to a significant degree, and there is ambiguity within the accompanying plans and documents causing unreasonable behaviour in the planning appeal, and this has led to unnecessary and wasted expense on the respondents' part in the appeal process.
26. Taking these individually and cumulatively together, I consider the appeal had no reasonable prospect of succeeding, having regard to the insufficient information and evidence presented in both the written submissions and evidence heard on behalf of the appellant on viability, affordable housing, social and infrastructure contributions (education), housing mix, accessible and adaptable dwellings, SuDs. There are several reasons as to why the development is contrary to the LP policies DEV2, INF4, INF5 and ENV2, conflict with the Framework and PPG and other material considerations were either not advanced or inadequate.
27. I have no substantive evidence that the Council acted against determining the application in a timely manner, or that it should not have been determined in accordance with the LP. No pre-application advice or front loading of the planning application was undertaken by the appellant, which could have led to understanding the concerns of the Council at an early engagement stage which the Framework and the PPG promotes. Therefore, the appellant has acted unreasonable, and this has led to unnecessary and wasted expense occurred by the applicant on the respondents' part on these matters above in the appeal process.
28. Turning to the Council's reason for refusal No.7 relating to insufficient information being submitted relating to BNG. Although the respondent has claimed that this matter should have been dealt with at the validation stage relating to the validity of the application. They did provide details that they thought would be acceptable to consider the de minimis exemption, which is consistent with the PPG of what may be submitted in the first instance for the exemption.

29. Nevertheless, as I have set out in the formal decision the inadequacy of the information which came to light which was in part the fault of the Council having a lack of understanding at the time the mandatory regulations came into force. This is further confirmed and evident in the responses in correspondence at the time of validation. Notwithstanding, my findings on BNG in the formal decision I see no reason why the Council's case officer during the application stages could have not sought further information following validation and considering a review of the initial consultations with GMEU. This would be in line with the PPG, and if they did not consider it to be an exemption, obtain a baseline and consider whether it would be subject to the BNG condition.
30. Moreover, the appellant would have had only the opportunity at the appeal stage to address the counter arguments put forward relating to the site plan modifications undertaken by the Council in the appeal process which showed higher figures of 35sqm being available. Therefore, I find that the respondent has acted in part unreasonable in relation to BNG only based on their arguments over validity and any transitional provisions. However, I do not consider that this has caused unnecessary or wasted expense in the appeal process.

Conclusion

31. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of viability, affordable housing, social and infrastructure contributions (education) housing mix, accessible and adaptable dwellings, SuDs, and a partial award of costs is therefore warranted.

Costs Order

32. 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 Mr C Buckley, K & L Properties shall pay to Warrington Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in viability, affordable housing, social and infrastructure contributions (education), housing mix, accessible and adaptable dwellings, SuDs; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Mr C Buckley, K & L Properties, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

K A Taylor

INSPECTOR