



Costs Decision

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision Date: 15th July 2019

Costs application in relation to Appeal Ref: APP/G4620/W/19/3220040 Scott Arms Shopping Centre, Walsall Road, Great Barr, Birmingham B42 1TQ

- 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 London and Cambridge Properties Limited for a full award of costs against Sandwell Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for an outline application for the construction of 5 dwellings with all matters reserved.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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.
3. The appellant suggests that the Council has behaved unreasonably because based on the positive pre-application advice from the Council there was a reasonable expectation that the scheme would be approved.
4. The PPG confirms that unreasonable behaviour may be demonstrated by an Authority as part of procedural issues even before the appeal was undertaken, however any costs must be related to the appeal itself. Paragraphs 39-46 of the National Planning Policy Framework (the Framework) specifically encourage the front loading of the planning system via the preliminary engagement with the Council. Whilst the purpose is meant to deliver a more fluid and transparent planning process, pre-application advice does not bind a Council to a particular decision. The PPG makes it clear that pre-application advice provided by the Council cannot pre-empt the democratic decision making process or a particular outcome, in the event that a formal planning application is made.
5. Based upon the information submitted, I am minded to agree with the Council that inaccurate information was submitted by the appellant which does not assist in generating accurate pre-application advice. The Council mention that during pre-application that there was confusion of the accesses and that clarification was sought as Bromford Walk was not able to be used as a vehicular access. The Design and Access Statement submitted with the application and as part of the appeal documents state at Section 2.2 and 6.9 that the vehicular access to the site would be from Bromford Walk which was 'an existing access road currently serving the car park.' This was shown not to

be correct as only the service road (Newton Road) has vehicular access to the site. Section 2.5 of the appellant's final comments on the appeal stated that it was always the intention that vehicular access would be from the service road which further evidences the inaccuracies in information, which are still present within this appeal. It is clear that the Council has not frustrated the case as their advice can only be as accurate as the information they are given and that information was inaccurate. As such I do not consider that the Council has acted unreasonably in their advice given which was based upon the information made available.

6. Whilst I have not been presented with a copy of the pre-application advice relating to a previous refusal on the appeal site, the Planning Officer's Report and the Appellant's Appeal Statement submitted highlight the previous reasons for refusal of a previous scheme involving a larger number of residential family dwellinghouses.¹ The reasons for refusal No2 and 3 for this prior refusal sight the access not being suitable for family dwellinghouses as well as the proximity of the service yard causing problems relating to noise, outlook, odours and general disturbance.
7. In dealing with a new application on the same site and type of development (albeit reduced from 9 dwellings to 5), it is reasonable that the previous reasons for refusal would need to be adequately addressed. It is clear from the submitted documents which accompanied the application as well as utilised to support this appeal did not address these matters sufficiently. Both the noise report and transport report were not updated to reflect the new scheme, and did not adequately address matters of noise, odours and disturbance in order to comply with planning policy and ensure that the scheme was appropriate in principle.
8. These matters existed in the previous refusal and the most recent refusal and are inherent to the principle of the scheme and do not entirely fall away because they are removed from the outline application considerations. I do not agree that these matters are 'presumptions' and could have been addressed by conditions in the reserved matters stage. The Council made its decision based upon the information available to them within the submitted reports, the location plan and design and access statement as these issues were clearly inherent to the planning merits of the case which would determine its appropriateness in principle. Given the previous reasons for refusal and the current reasons for refusal, a consistent approach has been adopted. Consequently, in accordance with the PPG, the Council has not acted unreasonably in this respect.
9. I note comments from the appellant which introduces a second ground for costs where there is a belief that the Council have introduced a new and unjustified reason for refusal which has resulted in unnecessary expense to the appellant and wasted time. The only new reason for refusal from the previous refusal was reason No3 which related to the lack of information presented to justify the loss of car parking. The transport report presented was the same as previously submitted to a previously refused scheme and did not reflect the new scheme. The Council was justified in seeking an updated report which reflected the current conditions under consideration to base their decision upon.

¹ Sandwell Council Planning Ref: DC/17/60943

10. The Council acted reasonably in seeking clarification through a revised report and as such the reason for refusal citing a lack of adequate information is reasonable. Despite this, the appellant still relied on this outdated survey during this appeal and as such was not put to any additional expense in defending this appeal. The appeal was not purely based on this additional new reason for refusal and the appeal could not have been avoided due to the need to defend two other refusal reasons in any event. As such I do not consider that the Council has acted unreasonably in introducing this new reason for refusal and that the appellant has not been put to any additional expense.
11. I also note comments from the appellant which introduce a third ground for costs in which it is stated that the Council has not produced any evidence to support their reasons for refusal and not referred to the Framework. The Council have submitted a statement of case which along with the officer's report explains and justifies the reasons for refusal. The Council in determining a planning application are required to assess whether the scheme is in accordance with the development plan unless there are material considerations that indicate otherwise.
12. Whilst not specifically referring to the Framework in their decision, this is not required given that the Council viewed the scheme to be contrary to the development plan. I consider that the Council has given appropriate weight to the sustainability of the scheme, however this is not the only matter to have regard to in assessing the planning merits of the appeal site. The Council assessed the scheme based upon the information available to them and have not acted unreasonably in this regard.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

J Somers

INSPECTOR