
Costs Decision

Site visit made on 27 November 2019

by Mike Hayden BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2020

Costs application in relation to Appeal Ref: APP/W4705/W/18/3217011 Land at Holme Mill Lane, Keighley, West Yorkshire BD22 6BL

- 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 Coshore Holdings Ltd for a full award of costs against the City of Bradford Metropolitan District Council.
 - The appeal was against the refusal of planning permission for the construction of up to 102 dwellings, access roads and 90-bed nursing home with relocation of scout hut.
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Decision

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

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. Claims can be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.
3. In this case the application for an award of costs is a substantive claim. In summary, it has been made on the grounds that the Council's Appeals and Regulatory Committee refused planning permission against the recommendation of their officers, responding instead to objections from the local community, and failed to support the reasons for refusal with evidence.
4. The PPG advises that local planning authorities are at risk of an award of costs if they unreasonably refuse a planning application or unreasonably defend an appeal¹. It goes on to give examples of where such actions could be deemed to be unreasonable, including failure to produce evidence to substantiate each reason for refusal on appeal, and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. Whilst the opinions of professional and technical experts should carry significant weight in the determination of planning applications and appeals, the decision maker must take into account all material considerations, weighing the arguments for and against a proposal. A planning committee is not obliged to follow the advice of its officers if there are material planning reasons for not doing so and it can substantiate those reasons with reference to evidence.

¹ PPG Reference ID: 16-049-20140306

6. Therefore, the fact that the Council's Regulatory and Appeals Committee reached a different decision to that recommended by their professional officers in this case, was not of itself unreasonable. From the minutes of the committee meeting it appears there were matters raised by local residents and a ward councillor about the potential impacts of the scheme, which the Committee considered outweighed the opinions in favour of the proposal. It agreed five reasons for refusal in support of its decision.
7. However, having done so, the PPG makes clear that it is incumbent on the local planning authority at appeal to produce evidence to substantiate each reason for refusal and not to rely on vague or generalised assertions about a proposal's impact which are not supported by objective analysis.
8. The Council's appeal statement responds to appellant's case in relation to each reason for refusal. The evidence and arguments given in defence of the fourth and fifth reasons for refusal, regarding adverse impacts on the Bradford Wildlife Area and the loss of woodland and protected trees draw on the expert evidence of the Council's Trees team. Whilst no alternative habitat surveys or assessments were provided in support of the alleged harm to trees and ecology, I am satisfied that the evidence to substantiate those two reasons was adequate, even if it was not sufficient to persuade me the development would result in significant harm to biodiversity or protected trees.
9. The first reason for refusal refers to the loss of a valuable community asset. The Council's statement contains a single paragraph to articulate this objection, but identifies three areas of open land that would be lost, which are currently enjoyed by the local community. Whilst the evidence is limited and in my decision on the appeal I conclude there would be no harm to local community assets, the Council's statement does adequately substantiate the amenity those areas currently provide, which would be affected by the development. The reason for refusal is misleading in alleging conflict with paragraphs 93 and 98 of the National Planning Policy Framework, which concern estate regeneration and protection of public rights of way, but this appears to be an error rather than unreasonable behaviour.
10. However, the Council has provided little or no evidence to substantiate the second and third reasons for refusal. With regard to lack of affordable housing being provided, the Council's statement simply reiterates the second reason for refusal that there remains a need for affordable housing in Keighley in explaining the conflict with Policy HO11. However, it neglects to acknowledge that the provision of affordable housing under Policy HO11 is subject to viability and fails to get to grips with the financial viability evidence, which has been independently verified by the Council, that the proposed development is unable to viably support affordable housing. No further viability evidence has been made available to substantiate this reason for refusal. It was therefore unreasonable for the Council to have continued to argue this ground at appeal unsupported by any objective analysis of this issue.
11. With regard to the third reason for refusal, whilst it alleges the layout and proximity of the access points to the site would have a severe impact on highway safety, the Council has provided no evidence to substantiate this. The clear advice of the highway authority to the Committee was that the access arrangements were acceptable. It was patently unreasonable for the Council to maintain this objection to the proposal at appeal, without any further evidence.

12. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in relation to the second and third reasons for refusal. On this basis, a partial award of Costs is justified.

Costs Order

13. 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 the City of Bradford Metropolitan District Council shall pay to Coshore Holdings Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred by the appellant in appealing against the second and third reasons for refusal concerning affordable housing provision and highway safety; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the City of Bradford Metropolitan 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. 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.

M Hayden

INSPECTOR