



Costs Decision

Site visit made on 9 April 2024

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13.05.2024

Costs application in relation to Appeal Ref: APP/Y1110/W/23/3325492 68-72 Howell Road, Exeter EX4 4LZ

- 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 Sam Williams for a full award of costs against Exeter City Council.
 - The appeal was against the refusal of planning permission for Demolition of garage workshop (Maximum Motors) and construction of four 3-storey (plus basement) purpose-built student accommodation units, numbering 26 bedrooms in total.
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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 applicant provides six reasons for the application for costs based on unreasonable behaviour by refusing the planning application, acting contrary to, or not following case law, and not determining applications in a consistent manner. The first reason is that the applicant engaged in extensive positive pre-application discussions. Secondly, that Committee Members ignored their own officer advice and recommendation. Thirdly, reliance on supporting text rather than the wording of policy. Fourthly, through unlawful interpretation of Policy H5(b) of the Exeter Local Plan First Review 1995-2011 (LP). Fifthly, taking a different approach to another site. And finally, through conflict with Core Strategy Policy CP5 requirement for 'more than 75% or more of additional student numbers to be accommodated in purpose built housing'.
4. In response to the first of the six points, the Council state that whilst pre-applications provide guidance, they are not a formal confirmation that the application will be successful. In relation to the second point, that the Committee disagreeing with an officer's recommendation is not unreasonable or uncommon occurrence with the Committee coming to their own conclusion following a balanced assessment of the proposal against policy. In relation to the third point, that the Committee interpreted policy and the supporting text in an appropriate manner. The fourth point, that Policy C2 is a continuation of Policy H5(b). The fifth point, that the other proposal is in a different contextual

- location with the appeal proposal considered on its merits. And finally, that it concluded that the development would be harmful to community imbalance.
5. In response to this the applicant states that they are applying for costs as the Members did not take notice of their own officer's pre-application advice, and as the officer accepts that there is no definition of 'imbalance' with Members refusing the application despite advice on this from the lead officer and the applicant highlighting the same in their legal opinion.
 6. In relation to the first and second reasons put forward by the applicant, it is not in itself unreasonable or unusual for a proposal to be determined contrary to pre-application advice, advice at a committee meeting or an officer recommendation, all of which are non-binding. Furthermore, the Council are not bound by the applicant's legal advice.
 7. With regard to the third reason, while the Council only referenced the aims of the Exeter St James Neighbourhood Plan (NP) as they see it, it gave reasons why it believed that the site was not a suitable location for the development due to conflict with wording within the NP. Although the Council acknowledge that Policy C2 of the NP does not contain a requirement to consider 'imbalance', the Council sought to relate the aims of the NP back to a relevant LP Policy H5(b) that does. I have found in my main Decision that the NP contains generally similar overall aims to Policy H5(b). As the NP is a material consideration and given the applicant's case that Policy C2 of the NP supports their proposal, the applicant would have addressed the policies in the NP in its appeal evidence in any case. Furthermore, the applicant would have had to submit an appeal due to the stated conflict with Policy H5(b). As a result, I do not find reference to the aims in the NP to have resulted in unnecessary or wasted expense justifying an award of costs.
 8. With regard to the fourth and sixth reasons, these relate to the interpretation of policies. I have found in my main Decision that the Council were able to rely upon Policy H5(b) of the LP, and from the evidence before me, the effect of the proposal on the local community was of great concern to a large number of interested parties including the St James Community Trust and local residents.
 9. Although I have found in favour of the applicant with regard to my main Decision, the Council provided reasons why it considered that the proposal would cause harm in relation to an 'imbalance'. It related this to the relevant development plan Policy H5(b). In light of this, and the lack of definition of 'imbalance', it was not unreasonable for the Council to rely on Policy H5(b), and it provided sufficient evidence to reach the decision it did. Furthermore, the Council, outlined the harm it believed would be caused despite the general support from Policy CP5 of the Core Strategy.
 10. Finally, in relation to the fifth reason, I note that the Beaufort House site referenced by the applicant¹ is located closer to the City Centre and closer to the east of Sidwell Street, where the Neighbourhood Plan advises that it is possible to properly plan for student accommodation. Furthermore, I have been advised that there is a range of non-student accommodation near that site, and it is set within a different context to the appeal site. As a result, I do not consider the Beaufort House proposal to be a similar enough case or set of

¹ 22/1531/FUL

circumstances to the current appeal such that the refusal of planning permission represented an inconsistent decision.

11. The applicant may disagree with the Council's assessment and decision. However, this does not mean that the Council acted unreasonably in refusing planning permission. The appeal provided an opportunity for the applicant to test the position and explain their case.
12. In light of the above, I do not find that the Council acted unreasonably by refusing planning permission, prevented or delayed development which should clearly be permitted, did not follow well-established case law, or determined the decision in an inconsistent manner worthy of an award of costs. It assessed the proposal supported by evidence justifying their concerns relating them to a relevant development plan policy.
13. Accordingly, I find that unreasonable behaviour on substantive grounds resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
14. The application for an award of costs is dismissed.

C Rose

INSPECTOR