Costs Decision

Hearing and site visit made on 7 October 2008

by J R Colburn MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
27 October 2008

Costs application in relation to Appeal Ref: APP/K2420/A/08/2080060
3 Cleveland Road, Hinckley, Leicestershire LE10 0AJ

- 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 Sycamore Developments for a partial award of costs against Hinckley and Bosworth Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the demolition of existing dwelling and erection of 14 apartments with ancillary works (revised application).

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Sycamore Developments

1. In support of the application reference was made to Annex 3 of Circular 8/93. The application is made on the basis that the Council failed to show reasonable planning grounds to substantiate reason for refusal 2 in their decision notice, and that this amounted to unreasonable behaviour. That reason related to the perceived inadequacy of on-site car parking provision, and the implications for on street parking and congestion in the surrounding road system.

2. The decision to refuse planning permission was taken contrary to the advice of the Council's officers. The Council had been advised that a refusal on car parking grounds would not be capable of being defended at appeal. The Planning Committee had been told by a late item submitted by their officers that an amended plan showing an increased level of car parking on the site to 128% had been submitted, and that in relation to a nearby site at the Mill Hill Business Centre an Inspectors decision following an appeal had found a car parking provision of 104% to be acceptable. The officers had concluded that in relation to this site, the level of car parking being proposed was acceptable for the proposal. The Council therefore were aware that this reason for refusal had been rejected at a previous appeal.

3. Furthermore in the light of that Inspector's decision, planning permission had subsequently been granted by the Council for the Mill Hill Business Centre site for a scheme with a lower level of car parking (at 100%) than was proposed in the appellants' scheme, which demonstrated that they considered this level of provision to be acceptable in a sustainable location.

4. The proposed level of car parking provision complies with the standards in the adopted Local Plan, PPG 13 and PPS 3; there had been no objection to the proposal from the Highway Authority.

The Response by Hinckley and Bosworth Borough Council

5. The Council accept that the Committee report made reference to the situation regarding the application of car parking standards to development proposals in the area, but nevertheless the Committee were entitled to come to different conclusions on the present case. Each application must be considered on its merits, different matters were taken into account in the Mill Hill Business Centre case. Different circumstances applied and the decisions should not be correlated too closely.

6. The car parking standards included in Appendix D of the Hinckley and Bosworth Local Plan contained a drafting error, incorrectly stating that the required standard for communal parking for flats with 2 bedrooms or less was 2 spaces per 3 dwellings, whereas it should say 3 spaces per 2 dwellings. Lower standards may be accepted in some cases but this standard is the starting point for evaluation. The scheme did not comply with the Council's standards.

7. The Planning Committee had not agreed with the Highway Authority (HA) that parking on the site access drive was acceptable, the HA representations were only advice to the Committee and they could legitimately take a different view.

Conclusions

8. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

9. The Council accepted at the appeal that in reaching their decision members had been aware that in relation to the Mill Hill Business Centre Site, not only had the Inspector concluded that a lower standard of car parking provision was acceptable, but he had also expressly concluded that as no Committee Minute or formal resolution confirmed the existence of the drafting error, and no steps had been taken to rectify the situation, the relevant standards to be applied were those printed in the Appendix to the Local Plan. That decision had been taken in 2006, but it was confirmed at the hearing that the Council had still not acted to remedy the perceived error.

10. Whilst each Planning Application must be considered on its own merits, and planning authorities are not bound to adopt the professional or technical advice received from their officers or consultees, they must show that there were reasonable planning grounds for taking a decision contrary to such advice, and produce relevant evidence to support their decision. The Committee was aware, or should have been aware that the proposed level of car parking complied fully with standards recommended in National Planning Policy, and that specific justification would be necessary to support the demand for higher standards to be applied.

11. In this case the Committee was also aware that their decision was inconsistent with a decision taken on a nearby comparable site by a Planning Inspector, and inconsistent with their own later decision on the same site. To rely upon their interpretation of the Local Plan car parking standard in the face of a decision

that this is not justifiable, was in my view perverse, and amounts to unreasonable behaviour. The Council failed to present any evidence to the hearing other than anecdotal discussion about demand for on street parking, to demonstrate why a higher standard of car parking provision should be necessary at this site, or to demonstrate different circumstances to those applying to the Mill Hill Business Centre, a site in the same road. The members decision in this regard was so clearly inconsistent and unjustifiable to be unreasonable, and it follows that costs should be awarded against the authority.

12. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated. I therefore conclude that a partial award of costs is justified.

Formal Decision and Costs Order

13. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, I HEREBY ORDER that Hinckley and Bosworth Borough Council shall pay to Sycamore Developments the costs of the appeal proceedings, limited to those costs incurred in respect of the Council's second reason for refusal as set out in the decision notice, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 against the refusal of planning permission for the demolition of existing dwelling and erection of 14 apartments with ancillary works (revised application) on land at 3 Cleveland Road, Hinckley, Leicestershire LE10 0AJ. Reason for refusal 2 stated that *in the opinion of the Local Planning Authority, the inadequacy of parking provision will exacerbate on street parking and congestion in the surrounding road system contrary to policies BE1 and T5 of the adopted Hinckley and Bosworth Local Plan*.

14. The applicant is now invited to submit to Hinckley and Bosworth Borough 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 Supreme Court Costs Office is enclosed.

J R Colburn

INSPECTOR