
Costs Decision

Site visit made on 5 June 2024

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 1st July 2024

Costs application in relation to Appeal Ref: APP/L3245/W/23/3326630 Bicton Heath House, Knowsley Drive, Bicton Heath, Shrewsbury SY3 5DH

- 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 Minster Care for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for the demolition of existing care home wing and proposed new build care home wing.
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Decision

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

Procedural matter

2. Prior to my determination of this appeal, the Council granted planning permission on 7 February 2024 for "Proposed demolition of existing care home wing and proposed new build care home wing (resubmission)" (Ref. 23/03972/FUL) (2024 permission). The approved development has a similar footprint, internal layout and site layout to the appeal scheme and is of similar scale and mass. It also provides the same number of bedrooms and the same level of open space and car parking, the same loss of the designated heritage asset and provides for the same tree planting and drainage proposals.
3. The fundamental difference with the appeal scheme is that the approved development has a different roof form which comprises a series of pitched roofs but most of the other elements of the scheme are very similar to the appeal proposals. The granting of the 2024 permission is therefore relevant to my consideration of this application for an award of costs.

Reasons

4. The Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs irrespective of the outcome of the appeal.
5. The planning application which was the subject of this appeal was refused by the Council for six reasons. These relate to the provision of on-site amenity space, tree impacts, car parking arrangements, design of the proposed new building, impact on neighbouring properties and the loss of a non-designated

heritage asset. The basis of the Appellant's application for an award of full costs is that, although the 2024 permission featured a different design, the principle of the loss of the existing building, provision of on-site open space, replacement tree planting and car parking provision were overcome in the revised application leading to the 2024 permission.

6. The Appellant contends that the Council continued to defend the relevant reasons for the refusal of planning permission in the appeal despite them being resolved as part of the revised application. Consequently, the Appellant considers that the appeal should only have focussed on the material differences in the design of the proposed building. As such, the Appellant contends that the Council has acted unreasonably in defending the other reasons for the refusal of planning permission in the appeal which has resulted in unnecessary expense being incurred.
7. In order to consider the individual merits of the Appellant's claim for an award of full costs it is necessary for me to consider each of the Council's reasons for the refusal of planning permission in turn, which I do below.

Reason for Refusal 1

8. The Appellant acknowledges that at the point the Council determined the appeal application there were few reasons put forward to support the contention that the proposal provided sufficient open space, albeit less than the requirements of Policy MD2 of the Site Allocations and Management of Development (SAMDev) Plan 2015. However, further supportive information was provided as part of the 2024 permission with particular regard to the quantity and quality of external and internal amenity areas and the manner which these areas would be used by residents of the care home. The Council accepted that this information was sufficient to enable compliance with Policy MD2 in the determination of the 2024 permission.
9. As part of the Appellant's Statement of Case in this appeal, submitted in July 2023, a considerable amount of the supportive information used in the 2024 permission submission was included. In my consideration of the appeal, I found that there are no material differences in the quantity, quality and usage of the external and internal amenity areas between the appeal proposals and that proposed in the 2024 permission.
10. Furthermore, the Council had also previously granted planning permission (Ref. 21/01030/FUL) (2021 permission) to extend the care home to provide for 29 ensuite bedrooms with similar levels of open space to that which would be provided in the appeal proposal. I have no evidence of the supporting information that may have been provided in that application which enabled the Council to confirm that there was no conflict with the provisions of Policy MD2. In any event, the 2021 permission is fundamentally a different design of development to that proposed in this appeal and the 2024 permission. However, it is entirely apparent that the Council had accepted on two occasions that a quantity of amenity space that was less than the 30 square metres (sqm) per person amount prescribed in Policy MD2 could be acceptable.
11. At the time the appeal application was determined by the Council it is clear to me that there was some deficiency in the supporting information to clearly explain how the amenity areas would be used by the residents of the care home. Against that background, I consider that it was reasonable for the

Council to refuse planning permission on the grounds of conflict with the provisions of Policy MD2. Therefore, the submission of the appeal with regard to Reason for Refusal 1 could not have been avoided.

12. However, the Council determined the 2024 permission on 7 February 2024, some three weeks before the date (28 February 2024) of the Council's Statement of Case in this appeal. There are no material differences in the external and internal amenity areas between the appeal proposals and the 2024 permission. Therefore, in my view, the Council were fully aware that it had accepted that the amount of amenity space to be provided would be sufficient prior to the submission of its Statement of Case.
13. However, the Council continued to defend Reason for Refusal 1 throughout the appeal despite the knowledge that the amenity space proposed had been deemed to be acceptable in the 2024 permission and that the similar supporting information had been provided in the Appellant's Statement of Case.
14. My attention has also been drawn to a High Court Challenge, R (Fraser) v Shropshire Council [2021] EWHC 31 (Admin), which related to the application of Policy MD2. Although this is a material consideration to which I have made reference to in my Appeal Decision, it is not possible for me to draw any firm conclusions on the extent to which the Council may, or may not, have taken this into account in the consideration of the planning application. In any event, I am clear that at the time the Council determined the appeal application it did not have sufficient evidence as to why it was not necessary for the open space standards in Policy MD2 to be met.
15. Against the above background, in my view, there was no reasonable basis for the Council to continue to defend Reason for Refusal No. 1 in the appeal following the determination of the 2024 permission. Therefore, with regard to this reason for refusal, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified. However, given the timing of events outlined above, such costs should be limited to those incurred only after the date that the Council determined the 2024 permission.

Reason for Refusal 2

16. The appeal planning application included a Landscaping Plan showing the position of new tree planting. However, the plan did not include details of tree species or planting heights. The Council's Tree Officer identified that the appeal proposals would have a moderate impact on tree resource which would affect canopy cover levels and public amenity to some degree. The Officer further identified that these impacts could be compensated for through new planting on the site but requested "full details of proposed tree species, planting stock, soil resource etc. to allow for an assessment on the sustainability and viability of on-site compensation planting".
17. In my view, the concerns expressed by the Tree Officer were not unreasonable given the close relationship of the appeal site with residential properties and the lack of such information on the Landscaping Plan. The Appellant contends that the submission of such details could have been made the subject of a planning condition and, in any event, the Council proceeded to determine the planning application without providing an opportunity for additional information to be provided.

18. In my view, there was nothing procedurally wrong in the Council's approach and position with regard to Reason for Refusal 2. There were justifiable planning grounds why further details of the planting were necessary and I consider, in these circumstances, that it would not be appropriate for such details to be deferred to a planning condition.
19. The evidence suggests that the comments from the Council's Tree Officer were provided on 29 March 2023 and were available to view online. As the planning application was not determined until 23 June 2023, I consider that the Appellant had ample time and opportunity to respond to the Tree Officer's comments. Therefore, I do not consider that there are any sustainable grounds to suggest that the appeal could have been avoided with regard to Reason for Refusal 2.
20. However, as part of the Appellant's Statement of Case further planting details were submitted in the form of a Tree Planting Scheme. This scheme was also submitted as part of the 2024 permission application. In determining the 2024 permission the Council considered that the submitted information was sufficient to enable it to deem that the information satisfactorily addressed the previously raised concerns in respect of trees.
21. Against this background, there was no justifiable basis for the Council to continue to defend Reason for Refusal 2 in the appeal following the determination of the 2024 permission. Therefore, the Appellant had no option other than to continue to contest this aspect of the Council's case in the appeal.
22. Consequently, in having to continue to contest Reason for Refusal 2, the Appellant has been faced with unnecessary expense. Therefore, with regard to this reason for refusal, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified. However, given the timing of events outlined above, such costs should be limited to those incurred only after the date that the Council determined the 2024 permission.

Reason for Refusal 3

23. In the application for an award of costs the Appellant has not submitted any material evidence to suggest that the Council's assertion that the proposal would constitute overdevelopment and result in a cramped and dominating appearance may have been unreasonable. In addition, no evidence in respect of this application for an award of costs has been submitted in respect of the Council's assertion that the proposal would result in overlooking of residential properties to the west.
24. Although there is little difference, if any, in external and internal layout and the footprint of the appeal proposal in comparison to the 2024 permission, there is a fundamental change in the design of the roof. The change to the roof between the two schemes is material and of such significance to suggest that it was entirely reasonable for the Council to come to a different conclusion on the appeal proposal and the 2024 permission.
25. The extent to which a proposed development impacts on the character and appearance of an area and may cause overlooking of an extent to warrant the refusal of planning permission is a matter of subjective planning judgement guided by policies contained within the development plan.

26. In my view, the Council properly considered the proposed development against the relevant policies contained within the Shropshire Council Core Strategy and the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan. It is a matter for the decision maker to consider the effect of new development on the character and appearance of an area and the extent to which overlooking may be caused and to the weight to be attached to these matters in that decision. Just because I found differently to the Council on these matters does not mean to say that it was wrong in its approach or subjective judgement regarding the consideration of the impact on character and appearance and the harm that overlooking may cause.
27. I have found that the Council had reasonable concerns about the harm to the character and appearance of the surrounding area and the effect on the living conditions of the occupants of nearby residential properties to the west of the site which justified its decision. Therefore, in my view, the appeal could not have been avoided.

Reason for Refusal 4

28. Although the Appellant has not provided detailed comments on this reason for the refusal of planning permission, it is nonetheless referred to several times in the general comments contained within the application for an award of costs. It is therefore incumbent on me to consider whether the Council's defence of this reason for refusal in the appeal constituted unreasonable behaviour.
29. The appeal proposal identifies that 13 car parking spaces would be provided, the same number as those proposed in the 2024 permission. Furthermore, I have no evidence to suggest that there are any material differences in the layout of the car parking spaces between the two schemes.
30. I accept that when the Council determined the appeal application it considered that insufficient information had been provided to demonstrate that adequate provision had been made to accommodate the likely parking demand and avoid the need for vehicles parking in the surrounding residential areas. In my view, this was a reasonable conclusion as there was little supporting evidence on parking and potential highway safety impacts submitted with the planning application. Therefore, I consider that the appeal could not have been avoided with regard to these matters.
31. However, as part of the Appellant's Statement of Case, a 'Highways Supporting Statement', dated 21 July 2023, was submitted to demonstrate that the proposed level of parking provision, 13 spaces, would be adequate to accommodate the likely demand and that there would be no other material impacts on the surrounding highway network. The same 'Highways Supporting Statement' was submitted with the 2024 permission application. In determining the revised application, the Council raised no objections to the level of parking provision, the parking layout nor did it raise any other matters in relation to highway safety.
32. Although the Council's Statement of Case made little comment on Reason for Refusal 4, it nonetheless did not identify that the evidence submitted in the appeal had satisfactorily addressed the car parking issue to the extent that it was no longer in a position to continue to defend this reason for refusal in the subsequent appeal proceedings.

33. It seems clear to me that the Council had accepted, well before my determination of the appeal, that the level of parking provision was appropriate based on very similar evidence, if not the same, that accompanied the Appellant's Statement of Case. Therefore, against this background, there was no justifiable basis for the Council continuing to defend Reason for Refusal 4 in the appeal following the determination of the 2024 permission.
34. Whilst I accept that the Council made little comment on this matter, it nonetheless did not identify that it was no longer in a position to defend Reason for Refusal 4 in the appeal in light of the previous acceptance of the submitted evidence in the 2024 permission. Therefore, the Appellant had no option other than to continue to contest those aspects of the Council's case in the appeal.
35. Consequently, in having to continue to contest Reason for Refusal 4, the Appellant has been faced with unnecessary expense. Therefore, with regard to this reason for refusal, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified. However, given the timing of events outlined above, such costs should be limited to those incurred only after the date that the Council determined the 2024 permission.

Reason for Refusal 5

36. The Council considered that insufficient details had been submitted to determine the effect of drainage installation on the root protection areas (RPA) of trees to be retained. An Arboricultural Impact Assessment (AIA) dated 27 February 2023 was submitted with the appeal planning application. The same Assessment was also submitted with the 2024 permission application.
37. The Assessment includes details of how works within the RPA could be undertaken without compromising the integrity of trees. However, the Council considered that these details were generic and not specific to the appeal proposal. As such the Council considered that this was not a matter that could be dealt with by the imposition of a planning condition.
38. Notwithstanding the Council's approach in the appeal scheme, in the determination of the 2024 permission I have no evidence to suggest that any further detailed information was submitted to supplement that contained within the AIA. The Council's Cost Response refers to further information but I have no evidence of what this may have been and the Appellant is also silent on this matter.
39. In the determination of the 2024 permission, the Council imposed a planning condition requiring the submission of a method statement for the protection of trees and their roots during demolition and construction. In the determination of the appeal, I found that the AIA was a suitable basis to consider the matter but I also imposed a similar planning condition.
40. On the basis of the evidence before me, I am unaware of any other material evidence that was submitted in the consideration of the 2024 permission to that which was submitted with the planning application which is the subject of this appeal. There was no justifiable basis for adopting a different approach in the consideration of the 2024 permission to that in the appeal application when the relevant supporting evidence was essentially the same. In my view, the

RPA matter was entirely capable of being dealt with by means of an appropriate condition which is exactly what the Council did in the consideration of the 2024 permission.

41. Consequently, in having to contest Reason for Refusal 5, the Appellant has been faced with unnecessary expense. Therefore, with regard to this reason for refusal, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Reason for Refusal 6

42. The Appellant considers in that determining the appeal application, the Council did not appropriately weigh the benefits of the proposal against the loss of the non-designated heritage asset, which is contended to be of very low level of heritage significance. As such, the Appellant contends that the Council failed to correctly apply the provisions of Policy MD13 of the SAMDev.
43. The appeal application was accompanied by a Heritage Statement. The same statement was submitted with the 2024 permission application. In terms of the benefits of the proposal, there is no material difference between the planning benefits to care provision that would ensue between the two schemes.
44. The Council suggests that further documents were submitted in the 2024 permission application to address the previous reasons for refusal but I have no evidence to suggest what these may have been, if any, in relation to Reason for Refusal 6.
45. On the basis of the evidence before me, it does appear that the Council adopted a different approach to the weighting of the benefits of the proposal in the consideration of the appeal proposals to that in the determination of the 2024 permission, even though the underlying evidence base was predominantly the same.
46. However, I accept the Council's assertion that in making a planning decision the weight to be applied to material considerations is a matter for the decision maker. The Council has suggested that there were material differences in the supporting information that demonstrated the benefits of the proposals between the two schemes. Whilst I have no evidence to indicate the nature or content of such additional supporting information, I have no contrary evidence to suggest that the Council's contention that additional supporting evidence in the 2024 permission application was provided may be incorrect.
47. On this basis, I have to accept that the Council, as decision maker, applied the weight it considered appropriate at the time to the planning benefits based on the evidence that was before it also at the time. Although the Appellant contends that the amenity benefits of the appeal proposal are set out in the Design and Access Statement, I do not consider that this document provides an authoritative basis to correlate the benefits of the development design to care need benefits.
48. I recognise that there may be some potential concerns regarding the consistency of the Council's decision making on these schemes with regard to heritage impact. However, on the basis of the evidence before me, I am unable to reach a substantiated conclusion that the Council applied inappropriate weighting in relation to the material benefits of the appeal

scheme when considered against the provisions of paragraph 209 of the National Planning Policy Framework and Policy MD13 of the SAMDev. Therefore, in my view, the appeal on this matter could not have been avoided.

Conclusion

49. With regard to Reasons for Refusal 3 and 6, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
50. With regard to Reasons 1, 2 and 4, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. With regard to these matters, a partial award of costs is justified but such costs should be limited to those incurred only after the date (7 February 2024) that the Council determined the 2024 permission.
51. With regard to Reason for Refusal 5, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and a partial award of costs is justified.

Costs Order

52. 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 Shropshire Council shall pay Minster Care the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting those aspects of the Appellant's case in the appeal that related to Reason 5 of the refusal of planning permission and those costs incurred from 7 February 2024 only in continuing to contest those aspects of the Appellant's case in the appeal that related to Reasons 1, 2 and 4 of the refusal of planning permission, as set out on the Council's Decision Notice.
53. The Appellant is now invited to submit to the 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 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.

Stephen Normington

INSPECTOR