
Costs Decision

Site visit made on 5 July 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 11 August 2017

Costs application in relation to Appeal Ref: APP/M2325/W/17/3171250 Post Office Hotel, 18 Freckleton Street, Kirkham, Preston PR4 2SP

- 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 Andy Bradshaw for a full award of costs against Fylde Borough Council.
 - The appeal was against the refusal of planning permission for demolition of single storey rear extensions to existing building, alterations & conversion of existing public house into 3no self-contained apartments & 3no new build town houses.
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Decision

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

Reasons

2. The cases of the parties have been put in writing and I have considered them taking account of the facts and circumstances of the case and the advice in Planning Practice Guidance.
3. The costs regime is primarily intended to introduce discipline into the appeal proceedings but costs can also be awarded where a local planning authority has acted unreasonably in refusing an application, or failed to adequately substantiate its refusal. The gist of the application for costs in this case is that the Council acted unreasonably in refusing the application contrary to the advice of its officers.
4. The Council is of course entitled to set aside officer recommendation and substitute its own judgement where it has good reason to do so but it has to be recognised in this context that many planning matters involve judgement by the decision maker and, although matters of aesthetics, for example, are not central to this case, my decision on the appeal does nevertheless involve a judgement, namely that such harm as may arise from increased parking pressure is of insufficient consequence to outweigh the benefits of the scheme.
5. Whilst clearly I do not ultimately share the judgement of the Council, I nevertheless consider it had sufficient reason to exercise its judgement that permission should be refused bearing in mind that not only did the Town Council prevail upon it to do so, as a consequence of its perception of parking problems, but that the Lancashire Constabulary, albeit from a policing perspective, also urged refusal. Notwithstanding the lack of objection from the highway authority, the policing perspective was nevertheless a material consideration which the Council apparently gave decisive weight to.

6. Whilst that perspective was expressed briefly and somewhat anecdotally rather than on a systematic evidential basis of the type that might be expected from the highway authority itself, the advice is nevertheless self-evidently from a respectable source and is based on valid professional concerns rather than uninformed assertion of opinion. That issues of the type raised in this case are a matter of sometimes fine judgement is apparent from various mechanisms deployed around the country to secure 'car-free' residential development, albeit no such approach has been attempted in this instance.
7. Although the officer recommendation of approval was ultimately clear enough, notwithstanding the advice of the Lancashire Constabulary, it is very evident on reading the report as a whole that the recommendation was on the balance of advantage and not necessarily clear cut. It admits the possibility of alternative judgement according to the weighting of factors and it is not possible to say that the Council simply took no account of the benefits when it reached the conclusion it did. On the contrary, its decision notice explicitly recognises the benefits in terms of housing supply, the sustainability of the location and the potential for improving the conservation area.
8. Moreover, in this context, it is relevant to bear in mind the recent judicial comment that "*planning decision-making is far from being a mechanical, or quasi-mathematical activity. It is essentially a flexible process, not rigid or formulaic. It involves, largely, an exercise of planning judgement.....*"¹ This seems to me a case in point.
9. All in all, the facts and circumstances of this case suggest to me that the Council was concerned to exercise its judgement in a responsible fashion, not necessarily in accordance with the advice of its own officers, and that concern was reflected in the refusal of planning permission leading to the appeal. As such I do not consider its behaviour in doing so to have been unreasonable.
10. Participants in the appeal process are normally expected to meet their own costs and there is no evidence of unreasonable behaviour in the appeal process itself.
11. For the above reasons I do not find that there has been unreasonable behaviour leading to unnecessary or wasted expense in the appeal process and conclude that the application for costs should be rejected accordingly.

Keith Manning

Inspector

¹ *Barwood Strategic Land II LLP v East Staffordshire Borough Council and SSCLG* [2017] EWCA Civ 893 para. 50