

Costs Decision

Site visit made on 31 October 2016

by S D Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 22nd November 2016

Costs application in relation to Appeal Ref: APP/D1835/W/16/3156342 The Goodrest, Barker Street, Worcester, Worcestershire WR3 8NP

- 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 NewRiver Retail Property Unit Trust, no 4 for a full award of costs against Worcester City Council.
 - The appeal was against the refusal of the Council to grant planning permission for erection of Class A1 convenience store including ATM with dedicated external servicing, refuse and plant area, associated car parking, access arrangements and landscaping without complying with a condition attached to planning permission Ref P14H0594, dated 14 January 2016.
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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) says that irrespective of the outcome of the appeal, costs may only 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. The PPG says that local planning authorities are at risk of costs where they impose a condition that does not meet the tests set out in the National Planning Policy Framework (the Framework) and the PPG. The tests include whether the condition imposed is necessary, precise and reasonable in all other respects.
 3. In granting permission for the retail store the Council imposed Condition 6 restricting the daily hours of deliveries to and from the appeal site. Within the specified delivery periods a further time restriction was made preventing deliveries between the hours of 0830 and 0915 and 1500 and 1600 on any day on which children are attending nearby schools (which for ease of reference I refer to as school term restrictions). This was imposed in the interests of highway safety particularly of children attending schools and to protect the amenities of neighbouring residents.
 4. The applicant considers that the Council behaved unreasonably and asserts that the Planning Committee refused the planning application without due regard to the advice of its own professional officers or the development plan and that officers should have provided more advice during the Committee meeting including drawing more attention to the lack of objection from the Highway Authority. The applicant points out that no substantive evidence other than anecdotal has been provided by the Council to substantiate concerns about highway safety or to demonstrate a severe adverse effect of the proposal on the highway network as required by the Framework and there are no
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policies in the development plan requiring monitoring to demonstrate that the terms of the disputed condition would have an adverse impact on the viability of the store. The appellant also considers the Council erred procedurally by the issuing of a decision notice that is written and published as an approval yet gives a reason for refusal which is confusing and misleading.

5. The Council responds that Councillors are not obliged to accept the officer recommendations. In addition whilst no definite evidence existed Councillors considered there to be a very real and serious risk of harm to children walking to and from local schools in the vicinity of the site and were entitled to have regard to this and this was the main concern of the Planning Committee and the Council.
6. I acknowledge that the Planning Committee chose not to follow the recommendation of officers. However, Councillors are not obliged to accept the recommendations of officers irrespective of whether the Chairman was reluctant to refuse the application based on speculation. The Planning Committee was entitled to take account of the effects of the existing use on the living conditions of residents and the effect on the highway network.
7. Without repeating all the information in the appeal Decision I have found that the school term restrictions are neither necessary, sufficiently precise nor reasonable and therefore do not meet the requirements of the Framework or the PPG. I have seen no evidence to justify refusing the variation to the disputed condition and I find the Council has failed to produce evidence to substantiate the reason for refusal and has demonstrated unreasonable behaviour in this respect.
8. It was not helpful that the Council issued a confusing decision notice but it appears that the applicant and/or agent attended the Planning Committee meetings and heard the views of the Council. Also in submitting the appeal it is clear that the appellant understood that permission was refused.

Costs Order

9. As set out above I find that unreasonable behaviour resulting in unnecessary expense in the appeal process as described in the PPG has been demonstrated. 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 Worcester City Council shall pay to NewRiver Retail Property Unit Trust, no 4 the costs of undertaking the appeal.
10. The applicant is now invited to submit to Worcester City 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.

SDHarley

INSPECTOR