
Costs Decision

Site visit made on 12 December 2016

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 6th January 2017

Costs application in relation to Appeal Ref: APP/R0660/W/16/3157081 Vine Inn, Rope Lane, Shavington CW2 5DT

- 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 New River Retail Property Unit Trust No. 4 for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for the variation of condition 9 pursuant to planning approval 14/5472N.
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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 Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
 3. The application for an award of costs relies, to a large extent, on the fact that the Committee of the Council determining the planning application decided not to accept the recommendations of its Officers to grant permission. In circumstances where officer's professional advice is not followed, it is reasonable to expect the authority to be able to produce relevant evidence on appeal to support the decision, but the appellant has argued that the Council has failed to substantiate the reason for refusal. The PPG indicates that such circumstances may lead to an award of costs against a planning authority.
 4. The reason for refusal relates to the impact the proposed change in delivery time would have on the living conditions of nearby residents in terms of noise and disturbance. This reason clearly relates to the proposal, and is an issue which needs to be addressed in considering the proposed change in delivery times.
 5. However, the Council's appeal statement provides no substantive evidence to support the reason for refusal. Moreover, the Council has not disputed the methodology, or the findings, of the noise assessment report submitted by the applicant in support of the proposal, which shows that the proposed changes would not have any significant adverse impact on nearby residents. I accept that in certain matters, and especially where issues are finely balanced, members are entitled to give greater weight to the views of local members and residents than their Officers in reaching their decision. However, noise is a
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technical and complex issue, and the absence of any specific evidence from the Council to support its position outweighs any local knowledge.

6. In the light of this, I conclude that the Council has not produced relevant evidence at appeal to support their decision to refuse planning permission. I therefore consider the Council's approach does represent unreasonable behaviour, and this has resulted directly in the need for this appeal.
7. Consequently, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated, and a full award of costs is justified.

Costs Order

8. 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 Cheshire East Council shall pay to New River Retail Property Unit Trust No. 4, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Cheshire East 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.

Alison Partington

INSPECTOR