
Costs Decision

Site visit made on 3 January 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 26 January 2017

Costs application in relation to Appeal Ref: APP/H2835/W/16/3158796 18C Oxford Street, Wellingborough, Northamptonshire NN8 4HY.

- 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 Endrit Lushaj for a full award of costs against Borough Council of Wellingborough.
 - The appeal was against the refusal of planning permission for a car wash and valeting facility including conversion of existing building to secure stores, office, customer waiting room and staff rest area.
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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) 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 first element of the appellant's claim alleges that the Council's Planning Committee acted unreasonably in deferring the application '*in order to get a comprehensive transport statement completed*'. Whilst I can well appreciate the appellant's frustration given that there had been no such request from the Highway Authority, the appellant opted to comply with the request.
 4. The PPG makes it clear that the award of costs cannot extend to compensation for indirect losses or those that are unrelated to the appeal itself. Consequently, whilst the Council's request for a Transport Statement might well of been unreasonable, as the expense incurred does not relate to the appeal, I am unable to find in the appellant's favour on this aspect of the claim.
 5. The second element of the appellant's application is made on substantive grounds and claims that the Council's reasons for refusal were vague and unspecific and could have been overcome by the use of conditions. This led to the appellant incurring costs directly in relation to the appeal. The PPG states that vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis can constitute unreasonable behaviour.
 6. With regards to the first main issue, the Committee Report comprehensively set out the putative reasons why Officers considered the proposal to be
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acceptable. The conclusion was unequivocal, that on account of the associated works, the development would have a positive impact on the visual appearance of the site particularly in relation to the existing situation. Indeed following consideration of the merits of the scheme I concur with that view.

7. Although the application was refused by Members contrary to the advice of its professional Officers, the Council is perfectly entitled to disagree with that advice, provided this is based on sound, substantive and defensible planning grounds. Whilst I accept that the Planning Committee must have debated the application, beyond a suggestion that the site was unsuited to the proposed use and had '*more potential*', the Committee Minutes submitted are limited to a record of the decision and voting. Consequently, there is little before me to explain how the Planning Committee came to the conclusion that the application should be refused.
8. The Council's first reason for refusal states: '*the proposed use of the site as a hand car wash in this prominent location would result in a form of development which would be detrimental to the character and appearance of the Wellingborough Town Conservation Area*'. Although various Development Plan policies are listed, there is a manifest failure to explain how the heritage asset would be harmed, to what extent or how those policies cited would be offended.
9. A statement was submitted by the Council as part of the appeal which provides some limited amplification of the Council's stance including reference to, inter alia, the increased vehicular use of the land, the height of the walls, inadequate space for the landscaping and the potential for litter. However, for the reasons set out in my decision these arguments are abstruse, unconvincing and unsupported by objective analysis. Based on the foregoing, I consider that in relation to the first main issue the Council's decision relies on no more than vague and generalised assertions unsupported by appropriate analysis and evidence.
10. In terms of living conditions, the Committee Report made it clear that there had been no objection from the relevant statutory consultee subject to conditions. The Council's refusal reasoning is non-specific and does not set out whose living conditions would be unacceptably harmed or how a car wash would result in '*noise, smells and other pollution*'. The Council's Appeal Statement offers no further insight into these matters. Finally, there is no explanation why these concerns even if they were valid, could not have been dealt with by planning conditions as recommended by the consultee.
11. I therefore conclude that the Council failed to produce relevant and substantive evidence in relation to living conditions in order to provide the clear and rational explanation necessary to justify a decision contrary to the views of the consultee and its own Officers' recommendations.

Conclusion

12. Neither reason for refusal stood up to scrutiny on appeal; indeed, there was a clear failure on the Council's part to produce the evidence necessary to substantiate its reasons for refusal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 the Borough Council of Wellingborough shall pay Mr Endrit Lushaj, the costs of the appeal proceedings described in the heading of this decision.
14. The applicant is now invited to submit to the Borough Council of Wellingborough, 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

D. M. Young

Inspector