
Costs Decision

Site visit made on 18 January 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 17th February 2017

**Costs application in relation to Appeal Ref: APP/J1915/W/16/3161904
Millars One, Southmill Road, Bishop's Stortford, Hertfordshire CM23 3DH**

- 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 S Webb for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for conversion of existing premises into 11 flats.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. Unreasonable behaviour described in the PPG can either be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
 3. It is put that the Council behaved unreasonably in a substantive sense by refusing planning permission on employment policy grounds which had been inaccurately applied. The contention is that the proposal had not involved the loss of an employment use, as the existing gymnasium use is not defined as such under the Use Classes Order. The Council's decision on this issue related only to Policy EDE2 of its currently adopted development plan, which seeks to protect employment sites. I consider employment sites would not be restricted to those falling within the business class of the Use Classes Order. My decision on the appeal has supported the refusal of planning permission in regard to the application of Policy EDE2. Consequently the Council had substantiated its refusal reason in this part of the decision and therefore had not behaved unreasonably.
 4. Paragraph 49 of the PPG gives examples of the types of behaviour which may give rise to a substantive ward against the Council, which includes not determining similar cases in a consistent manner. The case is made that the Council has been inconsistent in requiring parking provision towards the top end of the adopted standards, having previously allowed other developments in this vicinity, including the provision of flats in other parts of the Millars complex, with reduced standards due to the sustainable location.
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5. The report to Committee acknowledged lower parking standards had been applied to previous approvals and that the site was in a sustainable location. However, the report also referred to concerns, expressed by interested parties and shared by the Council officer, over inadequate parking provision having since become a significant problem in the Millars complex. Whilst the Council should be consistent in its decisions, it is reasonable for decisions to reflect changing circumstances. Consequently, the decision to refuse planning permission, due to the proposal not meeting car parking standards and being likely to exacerbate current problems, was adequately substantiated and would not amount to unreasonable behaviour.
6. Unreasonable behaviour of a procedural nature has to relate to the decision leading to this appeal. That the Council are postponing a decision on a second proposal is not a matter relevant to this costs application. Therefore I cannot find unreasonable behaviour in respect of this particular matter. Regarding the appeal, the Council would have been entitled to rely on its Committee report rather than submit a separate appeal statement. The Committee report adequately substantiated the Council's decision and so the lack of a separate appeal statement would not amount to unreasonable behaviour in a procedural sense.
7. The applicant considers the Council behaved unreasonably by introducing two further reasons for refusal into the Committee report, without having first disclosed these and provided an opportunity for discussion and rebuttal. Paragraph 33 of the PPG confirms the expectation that all parties behave reasonably throughout the planning process and, whilst making it clear that costs cannot be claimed for the period leading up to the Council's decision, behaviour and actions at that time can be taken into account in the consideration of a subsequent appeal costs application.
8. The Committee report would have been available prior to the Council's decision and the fact the officer had introduced certain issues not previously discussed with the applicant would not be sufficient to amount to unreasonable behaviour. An award of costs has to be based on unreasonable behaviour and unnecessary or wasted expense in the appeal process. A completed planning obligation has not been produced with this appeal and so the costs of this have not been incurred. The inclusion of a reason for refusal relating to the loss of a leisure facility would not have been likely to have led to significantly more costs having been incurred or to have comprised unreasonable behaviour on the part of the Council.

Conclusion

9. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. I conclude therefore that an award of costs in this case is not justified.

Jonathan Price

INSPECTOR