
Costs Decision

Site visit made on 26 October 2016

by M Seaton DipTP MRTPI

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

Decision date: 15 March 2017

**Costs application in relation to Appeal Ref: APP/V0728/W/16/3153590
82 High Street, Marske-by-the-Sea, Redcar, TS11 7BA**

- 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 Peter Milner for a full award of costs against Redcar & Cleveland Borough Council.
 - The appeal was against the change of use from a shop to a micro-pub.
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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 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
 3. The applicant contends that the Council has acted unreasonably by unnecessarily prolonging proceedings through the introduction of irrelevant and non-material reasons for refusal, as well as providing information shown to be inaccurate or untrue, and deliberately concealing relevant information at the Committee Meeting for the planning application. This, it is contended, has resulted in the delaying of development which should clearly be permitted as being in accordance with the Development plan, national policy and other material considerations. Furthermore, it is contended that the provision of inaccurate, vague and generalised information and assertions as to the development's impact, unsupported by any objective analysis, and where planning conditions could have been utilised to allow the development to proceed, has also delayed the development. The applicant has also expressed a procedural concern regarding the conduct of the planning committee and the attendance of members.
 4. Turning first to the procedural matters and the issue of the length of the overall proceedings related to the planning application, the Council has in my view set out a satisfactory chronology of events from the validation of the application to the refusal of planning permission, within which there are no apparent delays in the processing of the planning application.
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5. I would also not disagree with the Council's assessment as to the right of Members to debate the proposals as they would see fit, or their entitlement to cover a wide range and variety of issues in respect of the proposals. Similarly, members of the public engaging in the Committee Meeting would also be entitled to air their views within the constraints of the forum, however unpleasant these may be from the perspective of the applicant. Nevertheless, and despite my ultimate conclusion on the planning appeal, from the framing of the reason for refusal I am satisfied that irrespective of other material and non-material issues discussed at the meeting, the Council concluded their position on the basis of a reasonable and material planning matter.
6. Whilst I have noted the contention that the conduct of the Committee Meeting was swayed by 'outside forces' there is no compelling evidence before me in this respect that inappropriate behaviour or influence has occurred. Indeed the behaviour described does not appear to extend beyond that which could be normally expected at a meeting in which elected members and the public are entitled to participate. In any event, I consider that if the Council departed in some way from its procedures and code of conduct for the meeting, that this would indeed be a matter most pertinently dealt with by The Local Government Ombudsman.
7. I have noted the applicant's contention regarding the decision having been taken based upon untrue or inaccurate information, and that the matters relied upon which formed the reason for refusal were not debated or discussed prior to the motion to refuse the application. However, this does not correlate with the detailed published minutes of the Committee Meeting, which set out at length the various matters related to the Reason for Refusal debated by Members and raised by the general public. In the absence of a verifiable alternative transcript or recording of the events corroborating the applicant's contention, I have no reasonable grounds upon which to dispute the record of the meeting as set out in the Minutes.
8. With regards to the contention that the National Planning Policy Framework (the Framework) was at no point mentioned during the Committee Meeting and was thus concealed from Members, the Committee Report clearly refers to the Framework in a number of facets, as do the Minutes of the Meeting. The Council has made clear reference to the accessibility of the report to Members prior to the meeting and has determined the proposals against the Development Plan in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, as it is required to do.
9. Whilst I accept that there does not appear to be a specific reference to the promotion of economic growth in the context of the Framework, the acceptability of the principle of the use was quite clearly set out by Council Officers in the context of development within the town centre, and as a means of finding a use for an empty unit. I am also mindful that the Framework must be read in its entirety and that whilst there may have been support for the scheme in respect of certain economic issues, it was clear that the Council, in referring to paragraph 122 of the Framework, had concluded there to be conflict regarding the impact of the use itself on the amenity of neighbouring occupiers. I am satisfied that this conflict was accurately and specifically described within the reason for refusal and that it was not open to mis-interpretation.

10. Turning to whether the use of conditions could have enabled the development to go ahead, I accept that the assessment of whether there would be an impact on surrounding living conditions is principally a matter of judgement. However, for the reasons I set out in the main planning appeal decision, I consider that the relationship between the proposed Class A4 use and neighbouring residential uses could have been quite adequately controlled by the use of a suitable planning condition. Whilst accepting that the Committee Report recommended planning permission subject to an overall control on the hours of opening of the wider premises, it would have also been within the Council's remit to attach a condition restricting access within certain hours to the rear yard area, and I am satisfied that this would meet the tests for planning conditions. This would have proposed appropriate controls over the main source of dispute as set out in the reason for refusal, and to my mind I find the failure to address this matter to be the reason for the refusal of the planning permission, and as a consequence the need for the appellant to pursue the planning appeal.
11. I have not found there to be any compelling evidence on procedural matters that the Council has behaved unreasonably. However, whilst I am satisfied that the Council was entitled to reach a decision on the specific matters which it did, and that in doing so, the impacts were described accurately in the reason for refusal, the failure to utilise an appropriate planning condition to mitigate the impact of the proposed use has undoubtedly led to the delay experienced by the applicant and the need to undertake the expense of the planning appeal. I am therefore satisfied on the basis of the submissions that the Council has acted unreasonably in this respect.
12. On the basis of the above conclusions, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

Costs Order

13. 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 Redcar & Cleveland Borough Council shall pay to Mr Peter Milner the full costs of the appeal proceedings.
14. The applicant is now invited to submit to Redcar & Cleveland Borough 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.

M Seaton

INSPECTOR