

Costs Decision

Site visit made on 20 February 2017

by Zoe Raygen Dip URP MRTPI

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

Decision date: 22nd March 2017

**Costs application in relation to Appeal Ref: APP/P3040/W/16/3162264
Wheatsheaf Inn, 11 Nottingham Road, Cropwell Bishop, Nottinghamshire
NG12 3BP**

- 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 Marstons Estates Ltd for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal of planning permission for erection of Use Class A1 local needs convenience retail unit, with parking, landscaping, acoustic fencing and associated works.
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Decision

1. The application is allowed in accordance with the terms as set out below.

Reasons

2. The National Planning Practice Guidance (PPG) advises 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 the costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG makes it clear that a Council is at risk of an award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, if it fails to produce evidence to substantiate each reason for refusal on appeal and if it refuses planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead
 4. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case the application was refused on three grounds. The first two reasons relate to the potential for harm to highway safety with regards to a lack of car parking and the potential conflict between different users of the road and footway in the vicinity of the proposed access.
 5. The Highway Authority initially recommended that the application be refused on highway safety grounds. However, following the appellants submission of a parking study provided by Croft Transport Solutions identifying the particular
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- parking trends identified with a local convenience store it removed its objection to the scheme. Little evidence was put forward by the Council to refute the parking study and support the reasons for refusal. Nor has the alleged harm to highway safety been substantiated other than a vague assertion that increased on street parking would cause conflict with other road users and reduce visibility at the adjacent road junction.
6. Policy GP2 of the Rushcliffe Borough Non Statutory Replacement Local Plan 2006 (LP) requires, amongst other things, that a suitable means of access can be provided to the development without detriment to highway safety. The requirement for consideration of highway safety is supported in paragraph 32 and 35 of the Framework which also requires that development should accommodate efficient delivery of goods and services and create safe and secure layouts which minimise conflicts between traffic and cyclists and pedestrians. The Policy can therefore be given significant weight in the decision making process. The Council has a duty to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
 7. In the planning judgement, it seems to me therefore that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
 8. The third reason for refusal relates to the alleged harm caused by noise and disturbance from deliveries to the store. The appellant had, during the application phase, amended the scheme and provided a detailed noise assessment which concluded that mitigation measures could be incorporated to ensure that future resident's living conditions would not be harmed. Furthermore, on receipt of the amended scheme, previous objections raised by the Council's Environmental Health Officer (EHO) were withdrawn.
 9. The Council did not produce any evidence to challenge the objective noise assessment and for this reason it has failed to substantiate its concern that the development would have a harmful impact. Furthermore, conditions were suggested by Council officer's which, in their opinion, would mitigate any harm arising from the proposals. The absence of any evidence to support the third reason for refusal, or demonstrate why the use of conditions would not overcome any harm caused or meet the tests within paragraph 206 of the National Planning Policy Framework has resulted in the applicant being put to unnecessary expense in appealing this element of the decision.
 10. I therefore conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Rushcliffe Borough Council shall pay to Marstons Estates Ltd, the costs of the appeal proceedings described in the heading of this decision.

12. The applicant is now invited to submit to Rushcliffe 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.

Zoe Raygen

INSPECTOR