
Costs Decisions

Site visit made on 6 February 2017

by B Bowker Mplan MRTPI

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

Decision date: 23 March 2017

Costs application in relation to Appeal Ref: APP/W0340/W/16/3161019 The Red Lion, Church Street, Theale, Reading RG7 5BU

- 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 Iain MacNaught for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of planning permission for change of use from Public House to residential use, demolition of the former skittle alley and outbuildings replaced with a new two storey side extension comprising of an additional 7 dwellings.
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Decision

1. The applications for an award of costs are refused.

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 costs to incur unnecessary or wasted expense in the appeal process.
 3. The appellant contends that the Council did not assess the submitted viability assessment or take into account national planning policy regarding affordable housing nor appeal decisions relating to this matter. In addition, the appellant considers that the Council failed to provide adequate justification for the reason of refusal relating to vehicular parking. Consequently, it is contended that the Council has demonstrated unreasonable behaviour that has resulted in the appellant incurring unnecessary expense in having to appeal decisions that should have been permitted.
 4. The Council's Committee Report contains analysis of the appellant's viability assessment. The parties disagree on whether a sum of £50,000 was agreed prior to the Planning Committee resolution. However, the evidence before me is inconclusive to establish whether the fee was agreed. The Court of Appeal's
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judgement¹ was issued on the same day as the Planning Committee resolution which was to grant planning permission subject to the completion of an affordable housing legal agreement within a 3 month period. As the Court of Appeal judgement involved West Berkshire Council, I can assume that they would have been aware of its implications on affordable housing requirements.

5. I note that two of the three appeal decisions the appellant refers to were issued after the Council refused both planning permissions. However, prior to the refusal of the planning permissions on June 21st and 29th respectively, I have no evidence to demonstrate that the Court of Appeal judgement was fully considered by the Council. To my mind, this constitutes unreasonable behaviour.
6. However, taken into account the case put forward by the Council at the appeal stage which considers the Court of Appeal judgement, I am not convinced different decisions would have been reached and that the appeals were avoidable. In this respect, I conclude that the appellant has not incurred unnecessary or wasted cost in having to appeal decisions that should have been permitted.
7. As the Council has revised its parking standards since the determination of the application, it had a reasonable basis to withdraw its objection on highway safety grounds. Moreover, this matter required only a limited rebuttal by the appellant, with the main issue relating to affordable housing provision.

Conclusions

8. Therefore, I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated for both cases. For this reason, and having regard to all matters raised, an award for costs is not justified.

B Bowker

INSPECTOR

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441