
Costs Decision

Site visit made on 28 February 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 31 March 2017

Costs application in relation to Appeal Ref: APP/P3040/W/16/3162194 Wistow Wharf, Main Street, Zouch, Nottinghamshire

- 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 J Champneys for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the refusal of planning permission for the use of land for the stationing of a container used for the storage of items used in connection with the use of the site as riverside moorings.
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Decision

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

Reasons

2. 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. There are three claims to assess. Firstly, whether development was prevented or delayed that clearly should have been permitted having regard to the development plan, and whether the Council produced respectable evidence to substantiate its reason for refusal on appeal. Secondly, whether permission was refused on grounds that were capable of being dealt with by condition, and whether it was reasonable to question whether the container could be reduced in height. Lastly, whether the Council's handling of the planning application prior to the appeal was unreasonable.
 3. In relation to the first claim, the application was refused on the basis that the development caused harm to the character and appearance of the area, and so was contrary to the development plan. Such a finding is a matter of planning judgement. The Council's appeal statement referred to the serving of an enforcement notice in relation to the container because of its adverse effects on the visual amenities of the area. The appeal statement goes on to state that in the context of its riverside location the container is an alien feature that has an obtrusive impact and adversely affects the openness of the site and its rural surroundings. Although for the reasons given in the appeal decision I did not agree with the Council, through its reason for refusal and appeal statement it presented respectable evidence which substantiated its reason to refuse planning permission. As a result, it did not act unreasonably.
 4. Turning to the second claim, the Council acknowledged in its appeal statement that conditions securing a lowering in height of the container and its cladding in timber would improve its appearance. However, it did not agree that these changes would reduce the harm that would be caused to the character and
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appearance of the area to the extent that the development would be acceptable in planning terms. Whilst I disagreed with this finding, this was a matter of planning judgement. The Council in explaining why, in its opinion, such conditions would not make the development acceptable did not therefore act unreasonably.

5. Given that conditions should only be used if they are reasonable and capable of being complied with, it was not unreasonable of the Council to raise concerns about whether the container could be reduced in height. In supplying information to address this concern, unnecessary or wasted expense as a result of unreasonable behaviour was not incurred.
6. In relation to the third claim, the Council was entitled to request further information in support of the application and I recognise that the appellant was prepared to co-operate. E-mail correspondence shows that on the date of the decision notice the planning officer considered that there may have been some scope for withdrawing the application, holding discussions and submitting a new application. However, the e-mail also advised that the application had been recommended for refusal and that the Principal Planning Officer would be contacted to see if a decision on the application could be held off. Clearly, following the sending of this e-mail a decision was made that the application should be refused.
7. I recognise that the receipt of this e-mail would have raised the hopes of the appellant that a refusal notice would not be issued and that either the application could be withdrawn and a fresh application made, or that further information could be submitted. However, the Council was entitled to issue its decision notice and there is no guarantee that had it not, and further information or a revised application had been made, that planning permission would have been granted. The appellant may well still therefore have found himself in a position of receiving a decision notice refusing the application and having to appeal. Unreasonable behaviour resulting in unnecessary or wasted expense therefore did not occur.
8. Taking all these matters into account, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG has not been demonstrated. An award of costs is therefore not justified.

Ian Radcliffe

Inspector