
Costs Decision

Site visit made on 8 May 2017

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 7 June 2017

Costs application in relation to Appeal Ref: APP/P3420/W/17/3169702 Offley Arms Hotel, Poolside, Madeley, Crewe CW3 9DX

- 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 London & Edinburgh Pension Scheme LLP for a full award of costs against Newcastle-Under-Lyme Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 3no.Dwellings.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance advises that irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 3. The appellant submits that the Council has acted unreasonably in refusing the application against the advice of its professional officers and consultees without good reason. Taking into account the development plan, national planning policy and the sustainable location of the site the development should have clearly been permitted.
 4. Paragraph 049 of Planning Practice Guidance (PPG) advises that Local Planning Authority's may be at risk of a substantive award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. It further advises that they are at risk of an award of costs if they fail to substantiate each reason for refusal on appeal.
 5. In this case I have noted the recommendation of the Council's Officer and I consider it to be significant that the Council refused planning permission against the Officer's advice and the lack of objection from the Highway Authority. Whilst planning authorities are not bound to accept the recommendations of their officers, if such advice is not followed the Council will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so they are at risk of an award of costs.
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6. In this case the Council were concerned that the proposal would not provide sufficient car parking for the proposed development, including the Offley Arms Hotel, and that the existing access was not suitable for additional traffic. It is noted that the appellant carried out a car parking survey to enable an assessment of the parking requirements of the public house to be determined. The appellant also provided a drawing to show how the geometry of the access would be a safe and suitable means of access for the site.
7. Although the Council defended their decision in their statement and submitted third party objections, they have not produced any realistic or specific evidence to support their reason for refusal. They have not provided any evidence to counter the evidence and arguments put forward by the appellant or the Highway Authority's advice. Instead the Council have relied on the maximum standards set out in Policy T16 and imposed them without taking account of the flexibility embedded in them and more recent advice in the Framework.
8. Given the lack of evidence, I conclude that the Council's case was vague, based on inaccurate assertions about the impact of the proposed development, and not supported by any objective analysis. Therefore, it appears to me that having had regard to the provisions of the development plan, national planning policy and other material considerations the development should have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Newcastle-Under-Lyme Borough Council shall pay to London & Edinburgh Pension Scheme LLP, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Newcastle-Under-Lyme 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.

Elizabeth Pleasant

INSPECTOR