
Costs Decision

Site visit made on 25 April 2017

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 8th June 2017

**Costs application in relation to Appeal Ref: APP/A0665/W/17/3170561
The Cedars, Old Hall Street, Malpas, SY14 8NE**

- 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 McCarthy & Stone Retirement Lifestyles Ltd for a full award of costs against Cheshire West & Chester Council.
 - The appeal was against the refusal of planning permission for the demolition of existing building and associated outbuildings and erection of Retirement Living housing (category II type accommodation) communal facilities, landscaping and car parking.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) advises that where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
 3. The Guidance advises that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through unavoidable delay.
 4. Examples of behaviour which may lead to an award of costs against the local planning authority are also set out in the Guidance. These include failure to produce evidence to substantiate each reason for refusal on appeal.
 5. The appellant considers that the Council has not properly exercised its development management responsibilities. Officers found the proposal to generally accord with the development plan and recommended the application for approval. The appellant contends that Members only 'fell back' on to a reason for refusal relating to the proposal's impact on the character and appearance of the area when the Highway Authority would not support a reason for refusal in relation to highway safety and parking. It is also suggested that the reason for refusal on the decision notice was included because it was thought to be more subjective and defensible.
 6. Nevertheless, matters of character and appearance require the exercise of judgment. Members are entitled to come to a different view to Officers and are not bound by their recommendations.
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7. As described in my Appeal Decision, in this instance I agree with the concerns of Members and have found that the proposal would cause harm to the character and appearance of the area, and would have a detrimental impact on the significance of the Malpas Conservation Area, a designated heritage asset. As such, and for the reasons set out in my Appeal Decision, I am not persuaded that Members had no reasonable grounds to come to a different view to Officers on this matter.
8. Moreover, I am content that the Council has substantiated this reason for refusal with some level of objective analysis and reference to the development plan, the Malpas and Overton Neighbourhood Plan and the Malpas Character Study. It has had regard to the appellant's submitted Landscape and Visual Impact Assessment as set out in the committee report, and has not made vague, generalised or inaccurate assertions about the proposal's impact. On this basis, I have seen no evidence to demonstrate that the reason for refusal is disingenuous or unjustified.
9. The appellant also alleges that in reaching their decision, Members did not appropriately consider the objectives of the National Planning Policy Framework or the Guidance in terms of the weight to be attached to the delivery of specialist forms of accommodation for older persons. Nevertheless, these benefits of the scheme are set out in the committee report and were before Members when they made their decision. I note the appellant's reference to a recent award of costs finding in the appellant's favour on this matter. However, the weight to be attributed to both the harm and the benefits of a scheme is a matter for the decision taker based on the individual merits of a particular case. As described in my Appeal Decision, I have found that in this case, even when considered together, the public and other benefits of this appeal scheme are insufficient to outweigh the harm identified.
10. This being so, I am not convinced that the appeal could have been avoided, and overall am content that the Council has not prevented or delayed development which should clearly have been permitted, having regard to the development plan, national policy and any other material considerations.
11. I therefore conclude that the Council's behaviour has not been unreasonable and the appellants' costs in mounting the appeal were not unnecessarily incurred. Consequently, for the reasons given above, the application for a full award of costs is refused.

Elaine Worthington