

Costs Decision

Site visit made on 14 February 2017

by Susan Heywood BSc(Hons) MCD MRTPI

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

Decision date: 9 June 2017

Costs application in relation to Appeal A - Ref: APP/W1850/W/16/3157903

Wheatsheaf Inn, Bromyard Road, Whitbourne WR6 5SF

- 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 Fatydam 2 Ltd for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for a change of use and residential development at The Wheatsheaf Inn.
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Costs application in relation to Appeal B - Ref: APP/W1850/W/16/3157904

Car park opposite Wheatsheaf Inn, Bromyard Road, Whitbourne WR6 5SF

- 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 Fatydam 2 Ltd for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for residential development at land adjacent The Wheatsheaf Inn.
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Decision

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

Reasons

2. The 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.
 3. The appellant claims that the highway safety reasons for refusal were factually incorrect and were not supported by the highway officers. It is also stated that the Council acted unreasonably in not responding to their application for pre-application advice; the Council failed to take into account the lack of a 5 year housing land supply in refusing the applications and it judged the applications as though the Neighbourhood Development Plan (NDP) was adopted, which at that time it was not.
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4. The PPG states that local planning authorities are at risk of a substantive awards against them where, amongst other things, they fail to produce evidence to substantiate each reason for refusal, or where they give vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis.
5. The reason for refusal for Appeal B in relation to highway matters states "the development...would adversely impinge upon the visibility achievable for vehicles joining the A44 and looking eastwards given the need for reducing light pollution from westbound traffic on the application site". The Council's statement of case stated that its concern related to visibility when exiting the C1066 onto the A44. The Council's highway engineers did not respond to the consultation relating to the planning applications but that does not in itself amount to unreasonable behaviour. Nevertheless, the appellant had provided a plan to indicate that sight lines were achievable at that junction and the application is in outline form with layout being a reserved matter. It should therefore have been apparent to the Council that sight lines could be achieved at this junction by controlling the siting of the properties, at reserved matters stage, and the height and location of boundary treatments. The Council submitted no evidence to demonstrate that the sight lines were not achievable in support of its reason for refusal. In addition, no mention was made in its statement regarding the issue of light pollution referred to in the reason for refusal.
6. I have dismissed both appeals partly because of the number of conflicting movements generated at this point on the highway, close to a junction with a busy road with fast moving traffic. However, these matters were not raised by the Council, but by the Parish Council. I therefore consider that the Council did act unreasonably in failing to substantiate the reason for refusal relating to highway matters for Appeal B.
7. In order to justify an award of costs, any unreasonable behaviour must lead to unnecessary or wasted expense. The appellant dealt with this reason for refusal in one paragraph in the appeal statement. No significant evidence to counter the reason for refusal was given and there was no separate technical highway evidence submitted. The submission of a plan showing the achievable sight-lines during the application stage was necessary to demonstrate that the development was acceptable in this regard and I have taken it into account in this appeal. This does not therefore form part of any unnecessary expense at the appeal stage.
8. Even if the Council had not refused the proposal in Appeal B on this ground, it would have refused the development on the grounds of the sustainability of the location. I have agreed with the Council on this matter. An appeal would not therefore have been avoided.
9. On this point therefore I conclude that the Council did act unreasonably and the unreasonable behaviour amounted to unnecessary or wasted expense. That expense relates to the costs incurred by the appellant in defending the second reason for refusal at the appeal stage and in relation to Appeal B only.
10. Turning to the other matters raised, the PPG advises that costs cannot be claimed for the period during the determination of a planning application. Although behaviour at the time of the planning application can be taken into account, costs can only be awarded in relation to unnecessary or wasted

expense at the appeal stage. The lack of pre-application advice is not a matter which results in an award of costs at the appeal stage.

11. The Council did not fail to take into account the lack of a 5 year housing land supply. The Council's delegated reports for both appeals state "notwithstanding the current shortfall in the 5 year housing supply, this proposal is not in a sustainable location". In addition, the stage which the NDP had then reached is clearly referred to in the delegated reports and there is therefore no evidence that the Council treated this as if it had been adopted.
12. Consequently, I conclude that a full award of costs is not justified in this case. Nevertheless, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

13. 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 Herefordshire Council shall pay to Fatydam 2 Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending reason for refusal 2 for Appeal B at the appeal stage; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Herefordshire 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.

Susan Heywood

INSPECTOR