
Costs Decision

Site visit made on 23 May 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 20 June 2017

Costs application in relation to Appeal Ref: APP/W0340/W/17/3170011 Block A, Pipers Industrial Estate, Thatcham RG19 4NA

- 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 Enzo Aufiero for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of an application for planning permission for an extension to the existing workshop unit.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant claims that the Council's reasons for refusal were unreasonable and the appeal unnecessary had the Council properly applied its parking standards. He considers that it did not substantiate those reasons and that it introduced new reasons for refusal.
4. The PPG provides examples of unreasonable behaviour¹ in terms of the substance of the matter under appeal, which include:-
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and,
 - the failure to produce evidence to substantiate each reason for refusal on appeal; and,
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. It also provides examples of unreasonable behaviour² in terms of procedural matters, which include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.

¹ Paragraph: 049 Reference ID: 16-049-20140306

² Paragraph: 047 Reference ID: 16-047-20140306

6. I reject the claim that the Council introduced a new design reason for refusal or fresh evidence by referring to a different application in its statement of case. The reference amounted to a single sentence in a long document, and was clearly included by error, as was accepted by the appellant. I also disagree that the Council failed to substantiate its reasons for refusal; it provided detailed evidence from an expert in the matter on which the appeal turned, and it directly addressed the reasons given in its Decision Notice. These grounds do not amount to unreasonable behaviour by the Council.
7. However, in the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy, and other material considerations, the development proposed should reasonably have been permitted. The control the Council sought over parking was unreasonably demanding in relation to the scale of the proposal and unfounded in terms of any harm reasonably likely to arise. Its concern over historic issues of parking distorted the balance it should have applied to the proposal.
8. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of making the appeal.

Conclusion

9. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, 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 West Berkshire Council shall pay to Mr Enzo Aufiero 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 the Council of West Berkshire 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.

Patrick Whelan

INSPECTOR