
Costs Decision

Site visit made on 31 May 2017

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 3rd July 2017

**Costs application in relation to Appeal Ref: APP/M0655/W/17/3170549
Ego Restaurant, 25 Walton Road, Stockton Heath, Warrington Cheshire
WA4 6NJ**

- 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 Ego Restaurants Ltd for a full award of costs against Warrington Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for retractable awning with sliding glass front and sides over existing public seating area.
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Decision

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

Reasons

2. National Planning Policy Guidance (NPPG) advises that, irrespective of the outcome of the appeal, costs may only 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 NPPG paragraph 049 makes it clear that a local planning authority is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. This can include, for example, making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, or by failing to produce evidence to substantiate each reason for refusal on appeal.
 4. In the present case the appellant submits that the Council acted unreasonably by not determining the application in accordance with the substantive evidence presented to the planning committee, and by referring to the loss of trade to the neighbouring business as a reason for refusal.
 5. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate why a proposal is unacceptable on planning grounds and provide clear evidence to substantiate that reasoning. In the present case I have noted that officers twice recommended the application for approval. However, the decision in this case, which relates to a large degree on the appearance of the proposal, was a matter of judgement. It is clear that public opinion on this case was divided, with strong representations both for and against this scheme. As such it was appropriate that members should give careful consideration to the proposal, which I note included a site visit.
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6. In such cases judgements are often finely balanced and I have come to a different view from the Council on this matter. However, the reasons for refusal set out in the decision notice are complete, reasonably precise, specific and relevant to the application. They also clearly state the policies in the Warrington Borough Local Plan Core Strategy (LPCS) that the proposal would conflict with. These reasons have also been adequately substantiated by the Council in its statement of case, taking into consideration the evidence submitted by the appellant, the Council's observations and third party views. Therefore the Council has not acted unreasonably in this regard.
7. The appellant believes that the Council has relied on the possible loss of trade to the neighbouring business in its reason for refusal, stating that this is not policy based. Whilst the Council's reason for refusal refers to a more general concern about the proposal on the 'amenity' of the adjacent bar, its statement does note more specific concerns about the possible diminution of the bars visibility and attractiveness to customers. I therefore accept that such concerns ultimately relate to the trading status of this business.
8. However these viability concerns are not linked to matters of commercial competition which I accept are not material considerations. Furthermore, the policy basis for considering the effect of the proposal on the vitality and viability of the local centre is set out in the LPCS, with Policy SW1 supporting proposals *which contribute positively to the character, diversity and vitality of the Centre*. It follows that I am satisfied that the Council was able to substantiate its reason for refusal in this regard.
9. As a result I do not agree that the Council has acted unreasonably in this case. As such the appellant was not put to unnecessary or wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has not been demonstrated.

AJ Mageean

INSPECTOR