
Costs Decision

Site visit made on 23 May 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 14 July 2017

Costs application in relation to Appeal Ref: APP/R0660/W/17/3170004 The White Lion, Audlem Road, Hankelow CW3 0JA

- 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 Timothy Guttridge for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for demolition of public house and erection of 5no. four bedroom detached dwellings.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the National Planning Policy Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, inaccurate assertions about the proposals impact, which are unsupported by any objective analysis, acting contrary to, or not following, well-established case law and not determining similar cases in a consistent manner.

Ground 1: Preventing or delaying development which should clearly be permitted.

4. The Council states that there was no delay in determining the planning application. I note that a formal extension of time was agreed between the Council and appellant and that the Council's decision was issued within that agreed timetable.
5. The Council had significant concerns which led Committee Members to refuse the application contrary to officer recommendation. The reasons for refusing the application were clearly set out in the decision notice and expanded upon in the Council's statement. From the evidence and with regard to the differences between the Committee and the appellant, which I find to be reasonable, the scheme could not be considered to have 'clearly' been permitted.
6. The appellant states that every effort was made to address the issues raised by the Council during the application process to ensure that it was recommended

for approval at Committee. I have no reason to doubt this. However, the Committee is entitled to come to a different view to the officer. Furthermore, the Council's reasons for refusal were clearly explained and set out.

7. Having had regard to the above, I find there to be no grounds for an award of costs against the Council for unreasonable behaviour in relation to preventing or delaying a decision or making the incorrect decision which, the appellant argues, should clearly have been permitted.

Ground 2: Inaccurate assertions, unsupported by any objective analysis

8. The appellant states that not all relevant drawings were available for Committee Members to view at the meeting, including front elevation drawings which, it is argued, were key to the design related matters of the case. As such, I am led to understand that Committee Members indicated that a full assessment of the proposal was not possible.
9. Notwithstanding the availability of the drawings, Members considered that the existing building has some architectural merit and makes a significant contribution to the character and appearance of the area and its local distinctiveness. The Committee considered that the loss of this building and its contribution to the locality and its replacement by the proposal would detract from the character and appearance of the area. Furthermore, I note that the layout of the proposal was considered to be contrary to the existing urban grain and would therefore be harmful.
10. Design is a subjective matter. As such, opinions are wide ranging and different views can reasonably and justifiably occur between officers and Committee Members. It is evident that Members had a number of reasonable design concerns which were clearly identified and justified and based on the information provided.
11. The appellant refers to Paragraph 60 of the National Planning Policy Framework and argues that the Committee Members acted contrary to this by seeking to impose particular architectural styles and tastes. I have found no evidence before me to indicate this to be the case.
12. Having considered the above, I find that as decision-takers, Committee Members were entitled to have an alternate view to the case officer and to give more weight to design matters. As a result, I find that unreasonable behaviour resulting in unnecessary expense with regard to inaccurate assertions, unsupported by any objective analysis has not been demonstrated.

Ground 3: Acting contrary to, or not following, well-established case law

13. The appellant argues that the weight attached to the loss of an Asset of Community Value (ACV) was too great and that the weight given to the benefits of the proposal was too little. Examples of case law were provided which, it is argued, confirms that only minimal weight should be given to ACVs in determining proposals.
14. The Council states that the relevant guidance¹ when considering proposals involving the loss of an ACV advises that it is for the local planning authority to decide whether or not an ACV is a material consideration.

¹ The Community Right To Bid: Non-statutory advice note for local authorities, 2012 - DCLG

15. I note that Committee Members gave significant weight to Policy CF3 which requires any loss of an ACV to make suitable alternative provision as the appellant made no such provision. Notwithstanding the case officer's recommendation and the outcome of the appeal, I find that given the status of the relevant local planning policy and the relevant guidance, the Committee, as the decision-taker, was entitled to apply its requirements to the proposal and to attribute more weight to it when considered against other material considerations. Furthermore, although contrary to my assessment and findings, I find that the Council's reasons for doing so were reasonable, clearly set out and justified.
16. In addition, Committee Members gave weight to the fact that the site had not been adequately marketed for its existing use and that no marketing attempts for alternative uses, including community use, were evident. Moreover, I note that the Council gave weight to the benefits of the scheme in the overall planning balance. I am, therefore, satisfied that the Council acted reasonably in determining the proposal. The fact that the amount of weight attributed to relevant material considerations differs from the appellant's assessment is a planning judgment and does not constitute unreasonable behaviour. As a result, I find no grounds for an award of costs in this regard.

Ground 4: Not determining similar cases in a consistent manner

17. The appellant argues that the Council's decision is inconsistent with other similar, recent cases in the area and has provided examples approved by the Council where similar matters to the appeal scheme have been considered. Whilst there are similarities between the cases, there are also a number of differences. The Council has made reference to the differing circumstances of each case and argues that as a result, there are no grounds for an award of costs in terms of acting inconsistently in determining similar cases as each proposal must be considered on its own merits.
18. I do not have the details or circumstances of these other cases before me. Notwithstanding this, it is not in dispute that each case must be assessed on its own merits. From the evidence before me, due to the apparent differences and the similar but unique nature of each case, I find that the Council has acted reasonably in assessing the appeal proposal based on its own merits and circumstances and has clearly explained and justified its decision. As a result, I find that there are no grounds for an award of costs against the Council with regard to not determining similar cases consistently.

Conclusion

19. I have had regard to all matters raised with regard to the application for costs and I find that the Council has acted reasonably and has been justified in its approach to determining the proposal. As a result, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. Therefore, the application for a full award of costs is refused.

Andrew McCormack

INSPECTOR