
Costs Decision

Site visit made on 26 June 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 18th July 2017

Costs application in relation to Appeal Ref: APP/R0660/W/17/3172252 Vale Business Centre, Presty Fields, Congleton, Cheshire East CW12 4AQ

- 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 Nortek Material Handling (MHE) Ltd for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of outline planning permission for residential development comprising up to 10No dwellings including demolition of Vale Business Centre.
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Decision

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

Reasons

2. The National Planning Practice 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 expense in the appeal process.
3. The Council's sole reason for refusal was with regard to the design of the development and its effect on the neighbouring heritage assets. Whilst the application was in outline form, this does not preclude the Council from considering such effects and in them doing so is not unreasonable behaviour or indeed unlawful. However, the Council's concerns focus on specific design deficiencies of the illustrative drawings, which did not form part of the application, rather than substantiate why an acceptable design could not be achieved. I find that this is unreasonable behaviour.
4. The Council's consideration of the implications of the illustrative drawings on any outline permission was not based on any national or local planning policy or guidance. I find that to consider that they could prejudice the Council's position in assessing any future reserved matters is unreasonable behaviour.
5. This unreasonable behaviour has resulted in the appellant incurring unnecessary expense in preparing and submitting the appeal.
6. I have had regard to the Council's reference to further policies in paragraph 11.3 of their statement of case. However, these are only referred to in the context of the proposal failing to comply with them because of its failure to comply with other policies and guidance. I do not consider that it introduces new evidence and is not unreasonable behaviour.

7. Notwithstanding the Council's reasons for refusal, I have dismissed the appeal on the grounds of the harm it would have to flood risk. Both parties were given the opportunity to comment on this matter. I do not find that the Council have behaved unreasonably with regard to this matter.

Conclusion

8. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated in respect of the reason for refusal set out in the Council's Decision Notice. However, with regard to the effect of the development on flood risk, I do not find that the Council behaved unreasonably.
9. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in preparing and submitting an appeal against the reason for refusal set out in the reason for refusal, 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 Cheshire East Council shall pay to Nortek Material Handling (MHE) Ltd the costs of the appeal proceedings described in the headings of this decision limited to those costs incurred in relation to issues identified in the reason for refusal set out in the Council's Decision Notice.
11. The applicant is now invited to submit to Cheshire East 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.

Alexander Walker

INSPECTOR