



Costs Decision

Site visit made on 15 January 2018

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd March 2018

Costs application in relation to Appeal Ref: APP/Z3445/W/17/3180024 Footsteps Podiatry and Chiropody Clinic, Albert Road, Tamworth B79 7JN

- 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 Jonathon Shearer for a full award of costs against Tamworth Borough Council.
 - The appeal was against the refusal of planning permission for demolition of outbuilding, construction of new treatment room and associated toilet facilities for disabled customers, with entrance lobby linked to original building and installation of 2 no. velux windows in rear roof space.
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Decision

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

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. The application for costs centres on substantive matters arising from the merits of the appeal and the subsequent costs associated with preparing material for the appeal.
3. The decision notice identifies the reason for refusal and relevant development plan policies which support the decision.
4. The applicant claims that the Council has been inconsistent in its decision making suggesting pre-application advice indicated support for the proposal. However, informal pre-application advice is by its nature informal and as such is not binding on the Council. A previous planning application for a similar proposal on the site was refused which demonstrates consistency in the Council's decision making.
5. The description of the development identifies the purpose of the proposal and the officer report and decision notice identified that there would be harm from the proposal. Whilst I acknowledge that neither were explicit on the scale of the harm or whether any public benefits outweighed the harm in the planning balance in line with the provisions of the National Planning Policy Framework, the reason for refusal was precisely worded and substantiated by reference to relevant development plan policies. The PPG states that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. The

Council based their decision upon the development plan. I do not consider therefore that the Council has behaved unreasonably in this regard.

6. I acknowledge that the Council should have applied the balance at the application stage in accordance with paragraph 134 of the Framework. However, the Council has done it at the appeal stage and concluded that the public benefits do not outweigh the less than substantial harm. I agree with that conclusion. Moreover, I have also found that the scheme would not preserve or enhance the character and appearance of the Victoria Street/ Albert Street Conservation Area. Even if the Council had applied the balance correctly, which they should have done and this does constitute unreasonable behaviour, there is no indication that the appeal would have been unnecessary. Thus, I do not find that the Council's error amounted to unreasonable behaviour as part of the appeal process.
7. The applicant states that they have unnecessarily submitted a unilateral agreement regarding a transport related town centre commuted sum as there was no reference to a planning obligation requirement in the Council's statement of case. Whilst there may be no reference in the Council's statement, the officer report did identify that a financial contribution would be payable if permission were granted. I have no reason to believe that this is no longer the case. The Council has provided evidence regarding the need for such a contribution in the form of reference to adopted Policy IM1 of the Tamworth Borough Council Local Plan 2006-2031 and confirmation that the requested sum complies with the relevant tests in the National Planning Policy Framework and the regulations of the Community Infrastructure Levy. As such, I am unable to agree that the Council has provided insufficient evidence on this particular point or acted unreasonably.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that an award of costs is not justified.

K Ford

INSPECTOR