



Costs Decision

Site visit made on 13 August 2019

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2019

Costs application in relation to Appeal Ref: APP/J1860/W/19/3230170 The Anchor Inn, 69 Main Road, Kempsey, Worcester WR5 3NB

- 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 Punch Partnerships (PML) Ltd for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for retention of the existing public house (Use Class A4) and the erection of a convenience store (Class A1) and associated works including the reconfiguration of the car park and outdoor amenity areas.
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Decision

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

Procedural Matter

2. For clarity and precision, I have inserted 'Worcester' into the address in the banner, as it is listed on the appeal form.

Reasons

3. 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.
4. Paragraph 049 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples 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; failures 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. The applicant submits that the Council has acted unreasonably as Members of the planning committee were accurately advised by Council Officers that the development accorded with both local and national planning policy. Additionally, the applicant asserts that the reasons for refusal given by the Council are inaccurate in that it contradicts with the analysis of the Council's Officers. Furthermore, the applicant asserts that majority of the discussions during the meeting related to the potential loss of the public house, but this ultimately did not form part of the reasons for refusal. Additionally, it is contended that such matters as a balancing exercise was not discussed in relation to heritage assets against the public benefits of the proposal.

6. In this case I have noted the recommendation of the Council's Officer. However, on balance, I find the decision is one of a matter of judgement and the Council Members in this case were entitled not to accept the professional advice of Officers as long as a case could be made by them for the contrary view. However, I do find that unreasonable behaviour was demonstrated in the second refusal reason, as the issues surrounding the provision of electric charging points, bicycle and motorcycle provision were largely shown on the submitted drawings, where additional amendments could have been dealt with by a suitably worded condition.
7. Notwithstanding the recommendation from the Officer, and the misgivings of the second refusal reason, the Council's first and third reasons for refusal set out in the decision notice are complete, specific and relevant to the application. Additionally, I consider that the wording of the first and third reasons for refusal not to represent unreasonable behaviour.
8. The Council further supported their reasons for refusal with a full statement of case. The statement expanded on the reasons for refusal, identified the issues and described the reasons why the Council considered the proposed development would harm the significance of the Kempsey Conservation Area and the setting of nearby listed buildings and a non-designated heritage asset. Additionally, I find that the concerns in relation to highway safety, including deliveries to the convenience store and public house were adequately substantiated.
9. It will be seen from the decision in the appeal that I reached a similar conclusion to the Council with regard to the effect of the proposal on Colne House, The Anchor Inn and on the character and appearance of the Kempsey Conservation Area. Having regard to this, while the Council acted unreasonably through some of the issues listed on the second refusal reason, it did not delay development that should have been permitted having regard to the policies in the development plan, national policy and other material considerations.
10. On the basis of the evidence before me, I conclude that it has not been demonstrated that the Council's unreasonable behaviour caused unnecessary or wasted expense in so far as an award of costs could be justified. I therefore determine that the costs application should fail and no award is made.

W Johnson

INSPECTOR