



Costs Decision

Site visit made on 22 July 2019

by J M Tweddle BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Costs application in relation to Appeal Ref: APP/P1045/19/3228235

1 Union Street, Ashbourne, Derbyshire DE6 1FG

- 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 Majid Morabbi for a full award of costs against Derbyshire Dales District Council.
 - The appeal was against the refusal of planning permission for a change of use to the ground floor 1 Union Street Ashbourne Derbyshire DE6 1FG to an adult gaming centre (Sui-Generis) use.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, cost may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense.
3. The applicant submits that the Council has acted unreasonably in that, by refusing the appeal proposal, it has gone against the advice of its professional officers without good reason and failed to substantiate its objection to the proposal on grounds of harm to residential amenity with any evidence. Further the Council has failed to provide complete or specific reasons for refusal but instead offers vague and generalised assertions about the effects of the proposal on residential amenity, which are unsupported by objective analysis. It is their contention that the proposal complied with both local and national planning policy and all other material considerations and should therefore have been permitted without the necessity of an appeal which has caused the applicant unnecessary expense.
4. Furthermore, the applicant suggests that the Planning Committee has given undue weight to preconceived negative expectations / connotations of the proposed use rather than making their own objective appraisal.
5. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

6. 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 on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. The Council advise that members of the Planning Committee undertook a site visit to assess and fully understand the implications of the proposal on the residential amenity of neighbouring properties. However, it appears that members failed to fully appreciate the town centre location of the appeal site and acknowledge the established commercial uses in the locality and existing levels of noise and disturbance at the location of the appeal site, in particular a busy highway and public house directly opposite the appeal proposal.
8. No substantive evidence was put forward by the Council to support their reason for refusal that the proposal would result in 'unacceptable effects' on neighbouring residential amenity due to the 'nature of the proposed use'. I find this phraseology to be unhelpfully vague and unclear and does not provide a robust reason for refusal with clearly identified harm. From the evidence it appears that members did make unsubstantiated assertions over the potential effects of the proposal with no objective analysis or evidence to support their claims.
9. There was no objection from Environmental Health Officers in this regard and the appellant was willing to accept planning conditions to restrict opening hours and prohibit amplified music. It appears that members did not give appropriate consideration of these factors in their determination.
10. The PPG is clear that a refusal of planning permission on a ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. From my decision it is clear that the imposition of suitable conditions is capable of mitigating any potential adverse effects and thereby indicating that planning permission ought to be granted subject to such conditions.
11. In the planning judgement, it appears to me that, having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission, in the absence of any justifiable evidence and by advancing vague assertions about the proposal's impact, therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG. As a direct result, the appellant has been faced with the unnecessary expense of lodging the appeal.
12. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 Derbyshire Dales District Council shall pay to Mr Majid Morabbi, the costs of the appeal proceedings described in the heading of this decision.

14. The applicant is now invited to submit to Derbyshire Dales District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Jeff Tweddle

INSPECTOR