
Costs Decision

Site visit made on 28 January 2020

by S Shapland BSc (Hons) MSc CMILT MCIHT

an Inspector appointed by the Secretary of State

Decision date: 1 April 2020

Costs application in relation to Appeal Ref: APP/Q3305/W/19/3240225 Side of Premier Inn, East Somerset Way, Wells BA5 1UA

- 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 EE Ltd for a full award of costs against Mendip District Council.
 - The appeal was against the refusal of approval required under Class A, Part 16 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
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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. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations.
3. The applicant's application for costs is in relation to two matters. Firstly, that the Council acted unreasonably by providing formal pre-application advice in which they found that the siting and appearance would be acceptable, and then subsequently refused the prior approval when nothing had materially changed. Secondly that the Council failed to take into account a material consideration in respect of a prior approval application¹ when determining this application.
4. Turning first to the advice given at the pre-application stage, the Councils pre-application letter states that any advice given during the pre-application stage is informal and given without prejudice. The Council is clear that pre-application advice is given without the benefit of a site visit, and that on submission of an application the proposal would be subject to a more detailed consideration. Whilst I understand the frustration of the applicant that they were given a largely positive response to their pre application inquiry, this was clearly informal advice. It was without the benefit of a full assessment of the detail of the application or a site visit to consider the application sites environs.

¹ 2018/2958/TEL

In this respect I do not find that this amounts to unreasonable behaviour on the part of the Council.

5. The appellant states that prior approval was submitted to the Council for a proposal identical to the appeal which was sited in close proximity to the appeal site. It is claimed that by virtue of the Council not replying with 56 days that scheme benefits from an extant consent. It is their view that this should have formed a material consideration when the Council determined this application, and accordingly the failure to take this into account is considered unreasonable behaviour. This is a matter which the Council disputes.
6. Paragraph 47 of the Framework states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Council has assessed the proposal on its own merits, and found the application to be unacceptable in terms of both its siting, and character and appearance, when assessed against the development plan. The Council have indicated that even if there was an extant consent adjacent to the site, this would not carry enough weight to alter the conclusions drawn from their assessment of the planning application. I am therefore satisfied that the Council has not acted unreasonably in this respect.

Conclusion

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

S Shapland

INSPECTOR