



Costs Decision

Site visit made on 25 February 2020

by S R G Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th May 2020

Costs application in relation to Appeal Ref: APP/P3420/W/19/3242136 Newcastle-under-Lyme School, Mount Pleasant, Newcastle-under-Lyme, Staffordshire ST5 1DB

- 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 The School Governors of Newcastle-under-Lyme School for a full award of costs against Newcastle-Under-Lyme Borough Council.
- The appeal was against the refusal of planning permission for an extension to the existing school sports centre to form a new sports hall including the demolition of existing outbuildings and the formation of a new car park with a new vehicular access point off the highway.

Decision

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

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.
3. It is acknowledged that the Members of the Planning Committee do not have to accept the professional advice and recommendation of their officers. And that the effect of a proposal on the character or appearance of a Conservation Area is a material consideration. Therefore, concluding that the proposal would have an unacceptable effect is not, on its own, unreasonable behaviour.
4. A local planning authority (LPA) is at risk of an award of costs by refusing planning permission when it clearly fails to have regard to Government policy. In this case, the approach and policy to a decision of this nature is contained in PPG¹ and the National Planning Policy Framework (Framework). PPG indicates that what matters in assessing whether a proposal might cause harm, is the impact on the significance of a designated heritage asset. Where potential harm to designated heritage assets is identified, it needs to be categorised as either "less than substantial harm" or "substantial harm", in order to identify which policies in the Framework apply. Which category applies should be explicitly identified and the extent of the harm should be clearly articulated. Thereafter, depending on the category of harm, paragraphs 195 or 196 of Framework require any harm to a designated heritage asset to be weighed against the public benefits of the proposal.

¹ Historic Environment – Paragraph 022 Reference ID: 18a-022-20190723.

5. Here, the only record of the Members' approach to the appellants' application and the professional assessment and recommendation of planning officer are contained in the published minutes of the meeting. The formal record is sparse and records that a Councillor "...spoke on this application" and 2 Councillors proposed and seconded the reason for refusal. There is no record of the nature or extent of the discussion to show that Members were either advised of or considered the relevant PPG and applied Framework paragraph 196. This latter requirement is of importance given the Design, Access and Heritage Statement contained substantial evidence on the potential public benefits of the scheme. Moreover, there is nothing in the LPA's response to the appellants' application for costs other than reporting that the Members had all the information necessary to assess the impact of the proposal and undertake a proper planning balance to indicate that the Members undertook the balance required by Framework paragraph 196.
6. Accordingly, I conclude 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

7. 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 Newcastle-Under-Lyme Borough Council shall pay to The School Governors of Newcastle-under-Lyme School, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Newcastle-Under-Lyme Borough 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.

George Baird

Inspector