
Costs Decision

Site visit made on 26 May 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2020

Costs application in relation to Appeal Ref: APP/C2708/X/19/3242132 Leeds Liverpool Canal adjacent to the Rendezvous Hotel, Keighley Road, Skipton BD23 2TA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Craven District Council for a full award of costs against Mr Malcolm Weaving.
 - The appeal was against the refusal of a certificate of lawful use or development for a use described as a 60ft restaurant and function boat. The boat will be used for private, tourist and commercial events to be carried out whilst cruising on the canal.
-

Costs application in relation to Appeal Ref: APP/C2708/W/19/3243464 Leeds Liverpool Canal adjacent to the Rendezvous Hotel, Keighley Road, Skipton BD23 2TA

- 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 Craven District Council for a full award of costs against Mr Malcolm Weaving.
 - The appeal was against the refusal of planning permission for a proposed development described as a 60ft restaurant trip boat for group dining, commercial company activities, local and tourist dining, exhibitions, product launching, private anniversaries, etc. All carried out whilst cruising not whilst moored.
-

Decision: the applications are refused

Reasons

1. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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 Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance indicates that the right of appeal should be exercised in a reasonable manner, and that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.
2. The costs applications are made both in relation to the appeal against the Council's decision to refuse a certificate of lawful use or development (APP/C2708/X/19/3242132) and the appeal against its decision to refuse planning permission (APP/C2708/W/19/3243464). Both appeals relate to essentially the same proposal, specifically use of a 60ft restaurant and function

boat called the "Graceful Swan" for a range of private, tourist and commercial events to be carried out whilst cruising on the 4 or 5 mile stretch of the Leeds Liverpool Canal between Skipton and Kildwick. It is therefore convenient to consider the applications together.

3. The Council's applications for costs are made in both procedural and substantive grounds. In essence, the Council considers that in procedural terms the appellant acted unreasonably by not exercising his right of appeal in a reasonable manner. In relation to the substantive grounds for the costs applications, the Council considers that the appeal had no reasonable prospect of succeeding and that the appellant acted unreasonably in lodging the appeal.
4. It is the Council's view that the appellant lodged his planning appeal in order to vent his frustration at being requested to provide a range of mitigation measures considered by the Council as being necessary to make the proposal acceptable in planning terms. I do not perceive that to be the case. There was a very significant change in the appellant's circumstances in or around September 2019, insofar as the appellant became professionally represented at that time. Prior to that date, the appellant had acted on his own and without the benefit of professional planning advice.
5. It therefore seems to me that the appellant's understanding of the Council's request for mitigation measures, and the planning application/appeal process generally, changed significantly at that time. In those circumstances, I find nothing unreasonable in the appellant re-visiting his previous dialogue with the Council and, by then with the benefit of professional planning advice, deciding to take a different route. Indeed, I consider that he was perfectly entitled so to do and that he exercised his right of appeal in a reasonable manner.
6. In terms of the substantive reasons behind the costs application, I cannot agree that the appeal against the refusal of planning permission had no reasonable prospect of succeeding. The main issues raised by the Council's reason for refusal were the living conditions of the occupiers of residential properties adjoining the Leeds Liverpool Canal and the amenity value of the canal itself. Both are matters of subjective planning judgment. There was, in addition, a body of local support for the proposal citing the benefit to the local economy that would result, and which clearly weighed in favour of the proposal.
7. In the event, I found against the appellant on one of those main issues and for him on the other. In weighing the overall planning balance, I found that the harm outweighed the benefit. None of which means that the appeal had no prospect of succeeding. I find nothing unreasonable in the appellant's decision to lodge the appeal.
8. In relation to the appeal against the Council's decision to refuse a certificate of lawful use or development for the proposed use, I found in favour of the appellant and concluded that the Council's decision was not well-founded. It is therefore axiomatic that the appellant's appeal had a reasonable prospect of succeeding when submitted, and indeed did succeed. The appellant cannot be said to have acted unreasonably in submitting that appeal.
9. The Planning Practice Guidance is very clear in stating that an award of costs may only be made 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. I find that the appellant did not act unreasonably in bringing his appeal. In the absence of any unreasonable behaviour, an award of costs against the appellant is not justified.

Paul Freer
INSPECTOR