



Costs Decision

Site visit made on 27 October 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2020

Costs application in relation to Appeal Ref: APP/T3725/W/20/3252655 Unit 1 Moss Street, Leamington Spa, Warwickshire CV31 2DA

- 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 Sureway Property Services Group for a partial award of costs against Warwick District Council.
 - The appeal was against the refusal of planning permission for a 32 bed HMO (in association with 15 bed HMO previously approved under reference W/15/0994 dated 10 August 2015) following demolition of existing commercial buildings on land at the rear of 1-3 Althorpe Street at Unit 1, Moss Street, Leamington Spa, Warwickshire CV31 2DA without complying with a condition attached to planning permission Ref W/15/2154, dated 30 December 2016.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that parties in planning appeals normally meet their own expenses but 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. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations.
4. The Applicant submits that the Council has acted unreasonably as it failed to alert the Applicant for the need for a section 106 agreement during the course of the determination of the application and was only alerted to this when the report to committee was issued. It is submitted that had the Applicant known this, then a suitably worded section 106 agreement would have been submitted. The Applicant states that this has been provided as part of the appeal process. This omission constitutes unreasonable behaviour.
5. The Council have responded that the lack of provision for a unilateral undertaking was not the sole concern of its officers and an agreement was not requested so that the Applicant did not incur wasted expense. Furthermore, the Applicant has failed to clarify how they have been put to unnecessary expense which must be demonstrated in order for an award of costs to be made.

6. The Appellants response is that if such a request had been made it may have changed the planning balance of the proposal and negated the need for an appeal and its associated costs.
7. In my view, the Council could have informed the Applicant over the need for a legal agreement prior to the publication of the committee report. Whilst such action would have been highly desirable, I consider that this was not an unreasonable approach to take, especially given that this was not the only concern of the Council.
8. In terms of the overall balance of the planning merits, I noted in my appeal decision that a completed legal agreement had not been provided, albeit that the purpose of it was explained. Given that I found that the absence of such an agreement did not change the overall planning merits of the case this further endorses the approach of the Council in not seeking such an agreement.

Conclusion

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

Chris Forrett

INSPECTOR