
Costs Decision

Site visit made on 23 February 2021

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary

Decision date: 16 March 2021

Costs application in relation to Appeal Ref: APP/E2340/W/20/3264181 Former Spiritualist Church, Vernon Street, Nelson BB9 9DE

- 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 Saadat Khan for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of planning permission for outline: major: erection of three storey building for 18 no. studio apartments (Use Class C3) with access only and all other matters reserved.
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Decision

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

The submission by Mr Khan

2. The applicant has advanced that unreasonable behaviour was exhibited through the handing of the planning application. It is also argued that the reasons for refusal were not substantiated.
3. It is stated that the applicant reflected pre application discussions in the submission. A favourable recommendation was given by the case officer, however members of the relevant committee arrived at a different decision. It is claimed that this decision was based on vague, generalised and inaccurate assertions of the proposal's impact.
4. It is emphasised that the application was made in outline, with all matters other than access reserved for future determination. However, it is advanced that the reasons for refusal extend beyond the scope of the application and should have not been used as a basis to refuse planning permission. The item was referred to the Council's Policy and Resource Committee which evidences that officers understood that members had acted unreasonably.
5. It is the applicant's view that the appeal proposal complies with the development plan and national policy and that there are material considerations that weigh in favour of the appeal proposal.
6. The applicant has confirmed that the unnecessary costs that have subsequently been incurred relate to planning advice, meetings and the preparation of material for this appeal.

The response by Pendle Borough Council.

7. The Council has asserted that members are entitled to arrive at a different view to the officer recommendation. In doing so, they were fully conversant with the site and issues.
8. The Council considers that the application for costs is based on the premise that the appeal proposal is policy compliant. Furthermore, they believe that the appellant's assertions are broad and unsubstantiated.
9. The Council also advances that their appeal submission has justified the reasons for refusal.
10. Consequently, the Council maintains that there is no justification for an award of costs.

Reasons

11. It is clear that both parties have strayed into matters that would fall within the scope of reserved matters. However, as the quantum of development was clearly indicated within the description of development and remained unchanged when the application was amended that must form part of the determination of the appeal scheme. Essentially, it is that quantum of development which would give rise to the unacceptable harm identified and has resulted in this appeal and its outcome.
12. The members of the relevant committee were entitled to arrive at a different decision to the officer recommendation. It is clear that their decision was based upon relevant planning considerations. Indeed, the evidence presented to this appeal has substantiated harm to the character and appearance of the area and to highway safety and this has led to the failure of the appeal.
13. For these reasons, I do not find that unreasonable behaviour from the Council on substantive grounds, as described in the Planning Practice Guidance (PPG), is evident. Consequently, the Council's behaviour did not cause unnecessary expense in terms of the preparation and submission of the relevant appeal.
14. As the relevant tests set out in the PPG in respect to the determination of costs applications have not been met, I conclude that an award for costs is not justified.

C Dillon

INSPECTOR