



Costs Decision

Site visit made on 23 March 2021

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th April 2021

Costs application in relation to Appeal Ref: APP/V4250/W/20/3264037 38 Leigh Road, Leigh WN7 1RX

- 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 & Mrs Marian & Corina Pachiu for a full award of costs against Wigan Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for change of use of premises at 38 Leigh Road to A3 Cafes/Restaurant - For the sale of food and drink for consumption on the premises.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, e.g. by unreasonably refusing planning applications or by unreasonably defending appeals.
3. The applicants' claim is essentially that the Council, through its Planning Committee, acted unreasonably in deciding to refuse the application against the recommendation of officers, by failing to consider the merits of the application, but instead focusing on matters not relevant to the decision, including claims made by objectors regarding the character and motivations of the applicants, and allegations regarding the past use of the premises.
4. The Council has provided no response to the application for costs. Therefore, I have assessed this application on the basis of the applicants' submissions which refer to statements by various participants at the relevant Committee meeting, and to the Council's written submissions on the main appeal.
5. In this case, Council officers recommended the application for approval. However, elected Members are entitled to disagree with the advice and recommendations of officers and to attribute different weight to the various material considerations in coming to an overall view on the proposal.
6. The comments attributed to two Ward Councillors who spoke against the proposal at the Committee Meeting are not part of an official transcript, and whilst the Council has not refuted their accuracy, they are not part of a complete record of proceedings. The objectors refer to alleged unauthorised

- use of the premises as a drinking establishment and to incidents of noise and disturbance from people visiting it. They also question the suitability of the site in terms of parking availability, and cast doubt on the intentions of the applicants to operate a café/restaurant rather than a drinking establishment.
7. The applicants argue that these comments had a significant impact on Members' opinions of the scheme, but that they included unsubstantiated claims regarding visits by police and Council planning enforcement officers. The applicants point to a subsequent Freedom of Information Act request to the Council which revealed only one visit was made by an enforcement officer in 2019 in respect of the previous application, and no visits were made in 2020.
 8. From the evidence I have, at least some Members of the Committee placed weight on the objectors' comments. However, based on the comments before me, many, if not all, Members appear to have been aware of the planning history of the site irrespective of the comments made by the Ward Councillors. Moreover, other comments attributed to Members show they also placed weight on other material considerations, including parking, access and road safety. Members also commented on the operation of the use, the number of tables, the size of the premises and quality of cooking and washing facilities.
 9. That the Committee took into account the previous application is not an unreasonable approach to take, given it was recent, made by the same applicants and related to a form of development bearing some parallels with the later proposal. Nor was it unreasonable for Members to compare the two schemes in reaching a decision. The allegations made by objectors formed part of a wider number of material considerations taken into account by Members which were combined with prior knowledge of the site and local area. Given this, I am not persuaded that the Committee would have made a different decision had they not heard about these alleged incidents. Having considered the evidence before me, I am satisfied that Members of the Committee made a sound decision based on their judgement, something they were entitled to do.
 10. I understand the applicants' frustrations regarding comments made by some speakers about their character. However, I note from the applicants' evidence that the Council's legal officer intervened during the meeting to urge caution to Members, which indicates to me that Members were reminded of their responsibilities at the time. Had any inappropriate conduct subsequently taken place, it seems likely that the legal officer would have intervened again. I am not aware the legal officer was required to do so.
 11. Ultimately, the Council, in its statement of case, substantiated the decision of its Members by outlining the harms it considered would occur as a result of the proposal. Although I have not agreed with the Council in my appeal decision, this does not mean that it has behaved unreasonably, either through the actions of its Planning Committee or subsequently at appeal, given the main issues ultimately involved matters of planning judgement.
 12. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award of costs is not justified, and no award is made.

K. Savage INSPECTOR