

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: 17 May 2021

Costs application in relation to Appeal Ref: APP/E2340/W/20/3264110 Land adjacent to No 1 Barleydale Road, Barrowford BB9 6AD

- 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 Mrs Annabel Thomas for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of planning permission for erection of a dwelling house.
-

Decision

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

Reasons

2. The 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. The PPG adds that 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, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals.
3. In summary, the applicant's claim is that the Council, through its planning committee, acted unreasonably in deciding to refuse the application against the recommendation of its officers; through failure to notify officers of any concerns prior to the meeting; failure to adjourn the meeting to discuss reasons for refusal with officers; failure to give and record adequate reasons for refusing the application; and failure to defer the application to a higher committee given it was controversial. The applicant refers to advice to elected Members set out in 'Probity in Planning' a Local Government Association publication. The claim also points to the failure of Council officers to include reference to pre-planning advice in its committee report, and alleges that the reason for refusal was changed by a planning officer.
4. The Council refutes each of these claims. In short, it argues that the Committee followed well-established procedures for determining applications and did so in an objective and democratic manner, weighing the various planning merits and coming to a balanced decision. 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.

5. Elected Members are expected to consider applications on their planning merits and without prejudice. I do not have a full record of the debate held at the committee meeting, and I acknowledge the advice to Members set out in the 'Probity in Planning' document. There is little evidence before me to establish what actions members did or did not take prior to the committee meeting in terms of raising concerns with officers. However, I see nothing unreasonable in Members not doing so, as they may simply not have formed a view prior to the meeting, which is the principal forum for expressing views on the proposal.
6. I also concur with the Council that Members adjourning a public meeting to discuss reasons for refusal in private with officers may undermine public confidence in proceedings. Planning officers were in attendance at the meeting to advise Members in the public forum, albeit this particular meeting was held virtually. I have limited evidence to support the applicant's contention that the reason for refusal was 'changed' by the planning officer; however, it is common for officers to assist Members in framing the reasons for refusal. It is stated that several opposing views were expressed at the meeting, and therefore I find nothing untoward in the planning officers providing assistance to the Members in crystallising the reason for refusal, which was duly recorded in the minutes of the meeting.
7. The decision not to defer the application to a higher committee appears to me a judgement the Committee was entitled to make, taking the advice of planning officers. Moreover, whilst the number of Members present on the committee was lower than normal, there is no evidence that this was in breach of any procedural rules, nor is there firm evidence that the supposed over-familiarity between participants had any influence on the outcome of the application. These matters, and the applicant's wider criticisms of the makeup and operation of planning committees in Pendle are ultimately matters for local government accountability. They are outside of the appeal process and have not led to the Council exhibiting unreasonable behaviour in defending the reason for refusal at the appeal stage.
8. The pre-planning advice referred to is indicated to have preceded an earlier application¹ which was refused under delegated powers. This is a separate matter which is not relevant to the present appeal. The pre-planning advice was not referred to in the planning history set out in the committee report for the current scheme. However, this advice was evidently superseded by the formal refusal of the 2019 application, and therefore of limited relevance to a second planning application. In any event, informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all material factors. I find no unreasonable behaviour in this respect.
9. Ultimately, the recommendation of officers was a finely balanced one, weighing less than substantial harm to the significance of designated heritage assets against the public benefits of the scheme. On the evidence before me, the Planning Committee conducted this same balancing exercise but, as they are entitled, Members placed different weight on the benefits of the scheme and found these would not outweigh the heritage harm. It will be seen from my decision that I agree with Council Members. The Council therefore has

¹ Council Ref 19/0896/FUL

substantiated its position at appeal in relation to the proposal and its actions did not prevent or delay development which should have been permitted.

10. 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. Having regard to all matters raised, an award of costs is not justified, and no award is made.

K Savage

INSPECTOR