
Costs Decision

Site visit made on 2 June 2021

by A Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 June 2021

Costs application in relation to Appeal Ref: APP/R0660/W/21/3266426 Land off Heyes Lane, Alderley Edge SK9 7LN

- 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 Deanbank Investments Limited for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for the erection of 6 No. new dwellings.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. Planning Practice Guidance 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 expense in the appeal process. It goes on to state 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 preventing or delaying development that should clearly be permitted; failing to produce evidence to substantiate each reason for refusal; making vague generalised or inaccurate assertions about a proposal's impact; or by not determining similar cases in a consistent manner. They are also at risk of costs if they fail to behave reasonably in relation to procedural matters at the appeal.
3. The application was refused for two reasons; the failure to provide acceptable pedestrian access, and the effect on the character and appearance of the area. With regard to the second reason, the Council considered it would constitute an overdevelopment of the site. Although I disagree, and the appellant has since provided calculations showing that the density of the proposal would be broadly comparable to those of nearby housing, an assessment of this nature is a qualitative one as much as a quantitative one. It was not unreasonable for members to consider the development would appear cramped and therefore be harmful to the character and appearance of the area. Moreover, due to this, the Council did not delay or prevent a development that should clearly have been permitted.
4. With respect to the first reason, the advice of the officers to Members was that there was no technical reason to consider the access to the development would

be unacceptable for pedestrians. Members are not bound by the recommendations of their officers, but if coming to a contrary view need to provide substantive evidence to support their position. No such evidence was provided. The Council's statement of case refers to the narrowing of the pavement opposite the site as being a risk to pedestrian safety. However the Council's Strategic Infrastructure department had already considered that the remaining width of that pavement would be acceptable. As such, this first reason for refusal was generalised and has not been substantiated. This amounts to unreasonable behaviour.

5. The applicant suggests the application wasn't dealt with in a similar manner to a nearby residential development at No 71 Heyes Lane, which is more prominent. However, even though No 71 fronts Heyes Lane, the proposal would be clearly visible from Heyes Lane and from Oakfield Close and would be a much larger development. The two schemes are therefore substantially different such that the Council could reasonably come to different views.
6. With regard to procedural matters, the appellant's concerns about the conduct of the committee and particularly the Chair are noted. However, the planning practise guidance is clear that a procedural award of costs should relate to the appeal process. Although matters at the application stage can be taken into account, in this case they have not affected the Council's involvement in the appeal.
7. The Council's interaction with the appeal process has been slow and their statement of case was submitted significantly after the deadline. Nonetheless, this has not delayed the consideration of the appeal and I do not consider this has resulted in any additional expense on behalf of the applicant.
8. In summary, it is considered that the Council failed to substantiate the first reason for refusal and that this was based on generalised assertions. This was unreasonable behaviour and the costs incurred by the applicant in contesting that reason for refusal was an unnecessary expense. Therefore, a partial award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that East Cheshire Council shall pay to Deanbank Investments Limited the costs of the appeal proceedings, more particularly described in the heading of this decision, limited to those incurred in contesting the first reason for refusal.
10. The appellant is now invited to submit to East Cheshire Council, to whom a copy of this decision has been sent, details of these costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

A Owen

INSPECTOR