
Costs Decision

Site visit made on 28 September 2021

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 26 November 2021

Costs application in relation to Appeal Ref: APP/E2340/W/21/3276903 Powerhouse Gymnasium, Burnley Road, Brierfield, Nelson BB9 5HX

- 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 I Ahmed for a full award of costs against Pendle Borough Council.
 - The appeal was against the refusal of planning permission for a gym to ground floor and change of use of first floor and second floor to 10 apartments.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Planning Committee decided to refuse the application contrary to advice of their professional officers who had produced a written report analysing the effects of the proposal on a number of matters including highway safety. Authorities are not bound to accept the recommendations of their officers, but the PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal and/or rely on vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. From the evidence before me it is clear that the LCC highway authority had been in discussions with the appellant regarding the amount of off-street car parking provision and that the proposal was subsequently revised and reduced from fourteen to ten apartments to overcome these concerns. Whilst the highway authority originally requested that the proposal be reduced to seven apartments it concluded that the degree of on-site parking proposed was acceptable for ten apartments in this sustainable location.
5. Yet little evidence was put forward by the Council to support this reason for refusal and establish that there is an existing parking problem, and if so, how this would be made worse on highway safety grounds. The refusal of planning permission therefore constitutes unreasonable behaviour and the appellant has been faced with the unnecessary expense of lodging the appeal.

6. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

7. 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 Pendle Borough Council shall pay to Mr I Ahmed, the costs of the appeal proceedings described in the heading of this decision.
8. The applicant is now invited to submit to Pendle Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching 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.

Mark Caine

INSPECTOR