
Costs Decision

Site visit made on 8 March 2022

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2022

Costs application in relation to Appeal Ref: APP/Z1510/W/21/3280402 Rear of The Swan PH, 153 Newland Street, Witham CM8 1BE

- 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 J Purdy for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for demolition of single storey function room and erection of a detached dwelling to provide 1 x 2 bed house.
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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 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.
3. The applicant claims that the Council refused planning permission solely because the site is located within Flood Zone 3 and that it failed to take all relevant material considerations into account. It is also put forward that the Council provided misleading and late new evidence at appeal, as it incorrectly stated in its appeal statement that the function room is of poor construction, and that Greene King is involved in the operation of the premises and intends to discontinue use of the function room.
4. The PPG sets out examples of unreasonable behaviour which may result in costs awards. Procedural examples of such behaviour include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; prolonging proceedings by introducing new refusal reasons; and providing manifestly inaccurate or untrue information. In addition, examples of unreasonable behaviour in substantive terms include preventing development that should clearly be permitted, having regard to the development plan, national policy and any other material considerations; failing to produce evidence to substantiate each refusal reason on appeal; and making vague, generalised or inaccurate assertions that are unsupported by any objective analysis.
5. The Council's officer report considers various implications of the proposal in addition to flood risk. The decision notice clearly identifies that the proposal conflicts with the development plan and the National Planning Policy

Framework due to matters relating to flooding. These documents and the Council's appeal statement substantiate the refusal reason satisfactorily.

6. Whilst the officer report does not expressly identify several matters raised in the applicant's planning application documents, the Council responded to the applicant's points at appeal. Critically, I reached a similar conclusion to the Council in respect of flood risk and, for the reasons set out in the appeal decision, the proposal should not have clearly been permitted, having regard to the development plan, national policy and all other material considerations. As such, the applicant has not been put to unnecessary or wasted expense in having to lodge or make a case in relation to the appeal in its entirety.
7. The Council has not disputed that it erroneously identified that Greene King is involved in the operation of the premises. Moreover, irrespective of whom owns and controls the premises, no clear justification or objective analysis has been provided to support the claim that it appears that use of the function room is intended to be discontinued. In this respect the Council has acted unreasonably. Consequently, the applicant has been put to unnecessary expense in having to spend time clarifying at the final comments stage of the appeal that he owns and has control of the premises, and that the use of the function room for events will continue, in order to support his case. A partial award of costs is justified on this basis.
8. The evidence does not indicate that the function room is of poor construction. However, the Council does not suggest that the building is incapable of being converted or that its condition indicates that permission should be withheld. It is clear that the Council did not seek to raise a substantive new issue or refusal reason relating to the building's condition. Instead, the Council sought to highlight that the proposal involved demolition and the erection of a new building, and not a change of use. Therefore, the Council has not been misleading or otherwise behaved unreasonably in respect of this matter.

Conclusion

9. Unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has occurred.
10. A partial award of costs is justified, to cover the expense incurred by the applicant in having to make clarifications at the final comments stage of the appeal process as to the ownership and control of the premises and that the use of the function room for events is intended to be continued.

Costs Order

11. 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 Braintree District Council shall pay to Mr J Purdy, the costs of the appeal proceedings described in the heading of this decision, which are limited to those costs incurred by the applicant having to clarify at the final comments stage of the appeal process that he owns and has control over the premises, and that the use of the function room for events is intended to be continued.
12. The costs are to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Braintree District 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.

Mark Philpott

INSPECTOR