



Costs Decision

Site visit made on 23 November 2021

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 19th April 2022

Costs application in relation to Appeal Ref: APP/A2335/W/21/3277118 Baldrand Veterinary Practice, Bowerham Road, Lancaster LA1 3AJ

- 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 Karen Postlethwaite of Bay Vets for a full award of costs against Lancaster City Council.
 - The appeal was against the refusal of planning permission for redevelopment and extension to existing veterinary practice for Bay Vets.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and that behaviour has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Applications for costs should clearly demonstrate how alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The PPG provides examples of the types of unreasonable behaviour that may give rise to a substantive award against a local planning authority. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and, acting contrary to, or not following, well-established case law.
4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The applicant considers that, by failing to explicitly mention or give weight in the planning balance to relevant development plan employment and business policies, the Council failed to determine the planning application in accordance with the development plan.
5. There is no dispute that the Council's officer report should have included development plan employment policies in the list of relevant policy and they should also have been provided to the appeal. In this regard, my attention has been drawn to Policies DM14 and DM15 of A Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management DPD Adopted July 2020. Policy DM14 relates to new employment premises and it does not support the extension to an existing business. Policy DM15 is relevant insofar

- as it supports the sustainable expansion of small businesses subject to meeting criteria including compliance with other policies in the local plan.
6. The Council acknowledges it omitted to mention these policies, but it points out that DM15 does not provide unqualified support for proposals. The Council officer report does list the relevant National Planning Policy Framework policy, including section 2 achieving sustainable development and section 6 building a strong, competitive economy. The Council is supportive in principle of suitable building alterations that would support the economic viability of the applicant's small business. In reaching its decision, it did carry out a planning balance that weighed the benefits, including economic and social, against the harms and the policy conflict.
 7. Even accepting that it was unreasonable of the Council to fail to explicitly assess the proposal against Policy DM15, the Council did not fail to take into account the economic and employment benefits as a material consideration in the planning balance. The applicant is understandably disappointed with the Council's decision and she does not agree with its assessment, either in terms of the harm or the benefits of the proposal. She is frustrated by what she perceives to be the Council's dismissiveness and cursory consideration of the economic benefits and the importance of her business to the local community. Nevertheless, the weight to be afforded to the benefits and material considerations was reasonably a matter of planning judgement for the Council.
 8. As can be seen from my appeal decision, I also found harm and conflict with the development plan as a whole. In reaching my conclusion and dismissing the appeal, I took account of the local and national policies that weigh both for and against the proposal. While the existing business is unarguably well-respected and long-standing and it provides a high standard of care and service, neither the benefits of the proposal nor policy support for it would outweigh the harm and policy conflict.
 9. Therefore, there is little compelling evidence that explicit assessment against policy DM15 would have resulted in approval of the planning application. It has not been demonstrated that planning permission was unreasonably withheld or that the appeal could have been avoided. It has also not been demonstrated that the unreasonable behaviour, this being the Council's failure to weigh the development plan employment policy in the balance, resulted in unnecessary or wasted expense in the appeal process.
 10. Therefore, an award of costs is not justified.

Sarah Manchester

INSPECTOR