



Costs Decision

Site visit made on 8 March 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2022

Costs application in relation to Appeal Ref: APP/A0665/W/21/3286267 39 Hoole Road, Chester CH2 3NH

- 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 Chris Beebe (Co-op Estates) for a full award of costs against Cheshire West and Chester Council.
 - The appeal was against the refusal of planning permission for external alterations including the installation of a new brick wall, part-infill of existing window, installation of a double timber door and rendered frame, extension of brick walls, and the installation of 2no. refrigeration condensers.
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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 irrespective of the outcome of the appeal, costs may only 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 PPG makes it clear that a local planning authority is at risk of an award of costs if it prevents development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The basis of the applicant's claim for costs is that the Council's reason for refusal clearly relates to the intended use of the building, and not the proposed external alterations as stated within the banner header above. As detailed in the accompanying appeal, both the Council and the applicant are of the opinion that the use of the premises would not require planning permission, although several interested parties have expressed an alternative view. In any case, planning permission had not been sought for the use of the premises and therefore it did not fall to be considered.
5. The evidence before me in the appeal indicates that the local planning authority decided to refuse the application contrary to the initial advice of their professional officers. Whilst local planning authorities are not bound to accept the recommendations of their officers, it is still necessary for an appropriate case to be made for the contrary view.

6. It is clear from the Council's Planning Committee report that the planning officer and other internal consultees were satisfied that the proposed development would not result in any undue harm being caused from a design, heritage, residential amenity or highway safety perspective and that consequently it was in accordance with the development plan. As may be seen from the accompanying appeal decision, I concur with that view. Following the Committee's determination to refuse the planning application, the Council issued its decision notice which set out a single reason for refusal which stated that *'The proposed development would facilitate a use which would, by way of its distressing and morbid nature, combined with its visibility within a residential street (Derby Place), lead to a significant adverse impact on health and quality of life, contrary to the provisions of Policy SOC5 of the CWAC LP Part One'*.
7. The reason for refusal does not allege any harm directly from the proposed development itself, or elements of it, but instead that it would facilitate a use which would in the Council's view have a significant adverse impact on health and quality of life of residents. To my mind it is therefore clear from the Council's reason for refusal that it is the use which was the primary concern and not the proposed development itself.
8. The Council's case is primarily that the funeral directors could not operate from the property without the proposed developments taking place. However, this appears to be largely based on assertion with little by way of supporting evidence to substantiate that claim. This view is not shared by the applicant, who in their costs rebuttal statement states that the funeral directors business could still operate from the property without the external changes taking place, including utilising the existing parking area and front door. Indeed, from my own observations on site I find no compelling reason why the funeral directors' business could not operate from the property as it currently exists. The proposed development merely seeks to make the business operations more efficient and discreet than they would otherwise be with the building's current layout.
9. In my view, it is clear that the proposed development complies with the development plan in all regards and should have been permitted. The evidence clearly indicates that the proposed development in itself would not harm the living conditions of occupiers of neighbouring residential properties or have a significant adverse impact on their health or quality of life, which referenced policy SOC5 seeks to ensure. The Council instead sought to link, without good reason or sufficient evidence, the proposed external alterations to the intended use of the property in order to take issue with it.
10. Therefore, in my overall planning judgement, it appears to me that having regard to the evidence before me the Council prevented development which clearly should have been permitted having regard to its accordance with the development plan, national plan policy, and any other material considerations. The stated reason for refusal did not relate to the planning merits of the case, was un-substantiated and based largely on assertion.
11. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense incurred by the appeal, as indicated by the Guidance, has been demonstrated. Accordingly, I conclude that a full award of costs is justified.

Costs Order

12. 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 Cheshire West and Chester Council shall pay Mr Chris Beebe (Co-op Estates) the costs of the appeal proceedings described in the heading of this decision, such costs shall be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to the 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.

David Jones

INSPECTOR