
Costs Decision

Site visit made on 8 March 2022

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 17th May 2022

Costs application in relation to Appeal Ref: APP/U2370/W/21/3280992 2 Breck Road, Poulton-le-Fylde, Lancashire, FY6 7AA

- 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 Danielle Mellor for a full award of costs against Wyre Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for a development described as increase in height of perimeter brick wall and creation of covered area to seating (retrospective).
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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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The applicant considers that the Council behaved unreasonably resulting in the unnecessary expense of the appeal when the scheme should have been permitted.
3. The Council's decision notice identifies the harm that would arise, the neighbouring properties affected and the relevant development plan policies. The Council's appeal statement is brief but, read together with the officer report, the reason for refusal is substantiated with reference to the development plan. It was not unreasonable of the Council to consider the absence of visual harm to be a neutral factor that does not weigh in the planning balance and it does not provide a justification for the scheme.
4. The Council acknowledges that the planning application did not seek to extend the opening hours until 2300. However, it points out that the applicant's agent had indicated the intention to operate extended hours. While no corroborating correspondence has been provided, the August 2020 acoustic report was predicated on use of the beer garden until 2300. The revised October 2020 acoustic report and the appellant's statement subsequently refer to opening hours until 2200. Irrespective, there is no Lawful Development Certificate that establishes beer garden use beyond 1800 for planning purposes. The Council's concerns in any case relate to the impact more generally during the evenings and not specifically in relation to potential late opening. Consequently, while it may have been unreasonable of the Council to consider the application as an

extension to the opening hours, it was not unreasonable of it to consider the effects of the scheme during the evenings.

5. The applicant considers that the Council misinterpreted the development as an intensification of use and, in doing so, it failed to take into account the existing capacity of the beer garden. However, I also found that the development increases the suitability of the beer garden for use compared to the previous arrangement and there is little compelling evidence that the development would result in similar or even less intensive use. Therefore, it was not unreasonable of the Council to consider the likely effects of increased use.
6. The need for a noise assessment was identified by the Council's Environmental Health Team, taking into account the likely effect of the development on nearby residential occupiers. This is consistent with the requirements of Policy CDMP1 of the Wyre Local Plan 2011-2031 Adopted February 2019. Moreover, the neighbour representations, which are capable of being a material consideration, identified adverse noise impacts. It was not unreasonable of the Council to take account of the third party representations or to request a noise assessment. While the Council accepts that the increase in the height of the wall would attenuate noise, I find no inconsistency in it going on to conclude that the impact of the development would be unacceptable taking into account the duration, frequency and regularity of the noise disturbance.
7. The Council did consider the benefits of the scheme to the business, but it concluded that they do not outweigh the harm and the policy conflict. The weight to be afforded to the material considerations is a matter of planning judgement for the decision maker. In the absence of substantiated evidence of defined and significant benefits, it was not unreasonable of the Council to exercise its planning judgement in this regard. In the absence of details of similar schemes granted planning permission by the Council, there is little evidence that the Council's decision making was inconsistent.
8. The Council's decision will have been a disappointment to the applicant, not least as the development has already been implemented. The applicant disagrees with the Council's decision and the appeal provided the opportunity to test the reason for refusal. As can be seen from my appeal decision, I also found the scheme harmful to the living conditions of neighbouring residential occupiers. In the absence of compelling evidence to the contrary, I dismissed the appeal. It has not been demonstrated that the appeal could have been avoided or that the Council's refusal prevented or delayed development that should clearly have been permitted, having regard to the development plan. While expense will have been incurred in the appeal process, the parties are expected to meet their own appeal costs.

Conclusion

9. Therefore, and with reference to the PPG, it has not been demonstrated that unreasonable behaviour on the part of the Council resulted in unnecessary or wasted expense in the appeal process. Consequently, an award of costs is not justified in this case and the application for an award of costs is refused.

Sarah Manchester INSPECTOR