
Costs Decision

Hearing held on 12 May 2022

Site visit made on 12 May 2022

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2022

Costs application in relation to Appeal Ref: APP/R1038/W/21/3280285 Butchers Arms, Main Road, Marsh Lane S21 5RH

- 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 Craig Hughes (Envy Developments Ltd) for a full award of costs against North East Derbyshire District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the demolition of former public house and erection of 4 no. 3-bedroom dwellings with associated off-street parking and garden areas, and closure of footpath Eckington FP52.
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Decision

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

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 crux of the applicant's costs claim is that they have followed a process starting with the submission of a previous planning application in 2020, which was also refused planning permission. This led on to pre-application discussions with Council Officers and cumulated in the submission of the proposal which is subject to this appeal. There was no suggestion in the reason for refusal for the first planning application that the Council had concern regarding the demolition of the public house or that it was considered by the authority to be a non-designated heritage asset. The costs application is therefore pursued on the basis that the Council have not determined like cases in a like manner.
4. The planning application to which the appeal relates was determined by the Planning Committee, whereas the previous planning application was determined under delegated powers. Whilst the recommendation to the Planning Committee was to grant planning permission for the appeal proposal, Members were entitled to take a different view to that which was recommended by their Officers. In doing so, they set out reasoning which was clear and was based on sound planning grounds. Furthermore, the Council has actively engaged in defending its position at appeal, including during the hearing and through the submission of its own structural survey. It has

therefore produced detailed evidence to substantiate its reason for refusal and it has done this in an objective manner.

5. It is regrettable that a new matter arose at the point that the second planning application was determined, and I have a substantial amount of sympathy for the position that the applicant has found themselves in as a result of this. In particular as it is evident that they responded positively and constructively to the concerns of the Council Officers that were raised throughout the planning process and they sought to overcome them. However, having exercised their planning judgement and found that harm would arise from the totality of what was proposed including the demolition of the public house, the Planning Committee was not bound to follow the recommendation of their Officers solely because there had been an earlier refused planning application which did not raise that concern.
6. I am mindful that this means that the Council did not, in effect, determine like cases in a like manner. However, on the planning merits of the case the Council did not act unreasonably in refusing planning permission for the appeal proposal. For the reasons explained above, they also did not display unreasonable behaviour in defending their decision during the appeal process. Ultimately, the appeal could not have been avoided and a development that should clearly have been permitted has not been prevented or delayed by the Council's actions, as is reflected in my decision letter. This also means that the applicant has not incurred unnecessary or wasted expense in having to pursue an appeal. A costs award is not therefore justified with regard to the element of the reason for refusal relating to the demolition of the public house and it being a non-designated heritage asset.
7. The Council's concern with respect to the closure of the public footpath that runs across the appeal site was not explicit in the reason for refusal. However, it was articulated at the hearing as to why, in their view, the loss of the footpath is intertwined with the impact that would arise upon the character and appearance of the Conservation Area. Therefore, their concern in this regard was directly related to a matter that was pertinent to the reason for refusal and, on balance, it was not unreasonable for this to be raised during the appeal. Costs are therefore not justified on that ground either.

Conclusion

8. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for costs fails.

Graham Wraight

INSPECTOR