



Costs Decision

Site visit made on 20 June 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

Costs application in relation to Appeal Ref: APP/X4725/W/22/3290425 Waystone Ltd, Colorado Way, Castleford WF10 4TA

- 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 Manish Nakra for a full award of costs against City of Wakefield Metropolitan District Council.
 - The appeal was against the refusal of the Council to grant planning permission for the removal and demolition of Waystone Offices and replacement with MOT bay, car store and external car sales without complying with conditions attached to planning permission Ref 21/00831/FUL, dated 23 July 2021.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance ("the 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. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include a failure to produce evidence to substantiate each reason for refusal on appeal, and making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis¹.
4. The planning application was to vary three conditions on an existing planning permission, to allow an MOT testing station also to carry out some repairs to vehicles on the site to be, or having been, tested. This was refused by the Council for two reasons. Firstly, the Council considered that carrying out repairs would lead to an unacceptable and harmful increase in noise disturbance for nearby residents; secondly, that the proposal would lead to an increased number of vehicle movements which would adversely affect highway safety.
5. For the reasons set out in my main decision, I accepted the applicant's arguments that allowing repairs to be carried out on the site would not cause significant harm to local residents' living conditions or to highway safety. I therefore concluded that the appeal should be allowed, although this in itself does not indicate unreasonable behaviour on the part of the Council.

¹ Reference ID: 16-049-20140306

6. The decision to refuse planning permission was made by members of the Council's planning committee, contrary to their officers' recommendation that permission should be granted. As the Council has pointed out in its response to the applicant's claim for an award of costs, councillors have the right to overturn officers' recommendations; I entirely agree, and that they have done so is also not in itself an indication that the Council acted unreasonably. However, such decisions need to be substantiated and supported by objective analysis.
7. The planning application was accompanied by a Noise Impact Assessment ("NIA") which indicated that the proposed vehicle repair activities on the site would not result in harmful noise levels for nearby residents. The members of the planning committee considered that such work could be harmful to neighbours' living conditions, given the types of repair work, machinery and equipment involved, and the proximity of nearby dwellings. However, no evidence was put forward during the appeal to suggest that (for example) the NIA had understated, miscalculated or misrepresented the noise levels likely to arise from carrying out repairs, or to otherwise support members' point of view about the noise impacts of the proposal. Instead, the Council's appeal statement simply restated the committee's reason for refusing planning permission without further elaboration.
8. In respect of the potential impact on the highway network, the applicant's argument that carrying out repairs on site would lead to a reduction in vehicular movements rather than an increase had been set out in the planning statement submitted with the planning application. While the Council's highways development management officers did not go as far as endorsing that view, they were satisfied that there would be no intensification of the use of the site or any significant harmful effects on the highways network. Again, no further evidence was put forward during the appeal to substantiate members' assertion that the development would lead to an increase in vehicular movements, or that there would be subsequent harmful effects on highway safety.
9. While members may have referred to policies of the development plan when making their assessment of the planning application, the nature of the alleged conflict with those policies was also not adequately substantiated or supported by the Council's appeal submissions.
10. Taking these points together, I find that the Council made inaccurate assertions about the impact of the proposed development, and that it did not adequately substantiate the two reasons for refusal at the appeal stage. While I cannot endorse the applicant's claim that members were "determined to refuse this scheme no matter what" on the basis of the evidence before me, I nevertheless conclude that the Council's actions amounted to unreasonable behaviour. This led directly to unnecessary expense for the applicant in preparing and submitting the appeal. The Council's actions have meant that the appellant has incurred unnecessary expense, and an award of costs is justified.

Conclusion

11. For the reasons set out above I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is therefore 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 City of Wakefield Metropolitan District Council shall pay to Mr Manish Nakra, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to City of Wakefield Metropolitan 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.

M Cryan

Inspector