Costs Decision

Site visit made on 23 June 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2022

Costs application in relation to Appeal Ref: APP/E2340/W/21/3289117
Land at Whitewalls Drive, Colne

- 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 c/o Applicant Monte Blackburn Limited for a full award of costs against Pendle Borough Council.
  The appeal was against the refusal of Re-development of the site comprising the erection of roadside services including a Petrol Filling Station with ancillary convenience floor space and drive-thru coffee unit (Sui Generis) and Erection of two industrial units (Use Class B2/B8), with associated infrastructure, access, car parking and landscaping.

Decision

1. The application for a full award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.

3. Paragraph 49 of the PPG makes clear that local planning authorities are at risk of an award of costs if they prevent or delay development that should clearly be permitted, fail to produce evidence to support each reason for refusal on appeal, or make vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

4. The applicants' case for a full award of costs references the above elements of the PPG. Their principal concern is that the Council issued an unsubstantiated refusal contrary to the recommendation of its planning officers and independent retail consultants.

5. I acknowledge that the Council's Planning Committee determined that planning permission should be refused, contrary to the officers' recommendation. While the Planning Committee is not duty bound to follow the advice of its officers or consultees, if a different decision is reached the Council has to clearly demonstrate why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

6. With regard to the first reason, the Council clearly sets out its concerns in the reasons for refusal: '*The nature and design of the proposed development, which is industrial in nature, is out of scale and character with the surrounding countryside and setting and considerably detracts from the open aspect of the*

area and thus is poor design…' These reasons for refusal are supported by the Council's appeal statement. Whilst I took a different view, the Council's Members were entitled to take the opposite view, contrary to its officers. On the basis of what is before me, I am satisfied that this judgement was exercised reasonably.

7. With regard to the second reason for refusal, the decision notice makes clear that the Council considers that the retail impact of the units, although modest, would result in an unacceptable impact on Colne town centre. This is supported by the approach in the Council's appeal statement which sets out the Council's view that there is limited passing trade in this location. It provides evidence for this conclusion in terms of commuter numbers as well as information with regard to the level of spend in Colne. Whilst I was not convinced by the Council's evidence, the Council's Members were nonetheless entitled to take a different view to its officers on this basis and, for the above reasons I am satisfied that the refusal was not unsubstantiated.

8. In coming to the above conclusion, I have had regard to the Framework and the requirement for a sequential test. Whilst the appeal site falls below the floor space threshold of 2,500 square metres contained within the Framework, this does not, to my mind, mean that a development could not theoretically have a significant adverse effect on town centre vitality and viability.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul Martinson

INSPECTOR