



Costs Decision

Site visit made on 17 August 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7th October 2022

Costs application in relation to APP/V4305/W/22/3293572 8 Moorfield, Tower Hill, Kirkby L33 1XD

- 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 Tisa Property Limited for a full award of costs against Knowsley Council.
 - The appeal was against the refusal of planning permission for the change of use of the ground floor of the premises from a mixed sui generis use (public house & hot food take-away) to use retail convenience (Use Class E), the erection of a 2m high close board fence and gates, along with the reinstatement of car parking at the site.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The applicant contends that the Council has acted as such in this case.
3. One element of the applicant's case relates to the Council's alleged failure to assess the significance of the lawful use of the site. However, the Council accepted that the site could be used as a pub and takeaway, and acknowledged the existence of a certificate of lawfulness. Furthermore, I have found in my appeal decision that this is not a realistic fallback position. I therefore do not consider that it was unreasonable for the Council to attribute limited weight to this existing lawful use.
4. The applicant further alleges that the Council failed to take account of the sequential test submitted with the application. However, the Officer Report acknowledges and accepts the conclusions of the sequential test. It is clear from the Officer Report that, despite this, the proposal remained contrary to other aspects of the development plan, such that permission should not be granted. I do not consider that reaching such a conclusion amounts to unreasonable behaviour.
5. I also do not consider that the Council acted unreasonably in giving weight to concerns raised by the local residents. The applicant would have been aware of the objections raised and, on the basis of the evidence before me, these concerns are not the only reason that the Council reached its view. Similarly, I do not consider that the Council made or relied on general assertions relating to the proposal's impact on crime and anti-social behaviour. The Council's evidence is clear that the proposal has been refused as it was not considered to comply with current policy,

and reasoning of this stance is provided. In this sense, the Council's overall case is clear, precise and directly addresses the reason for refusal.

6. The applicant further states that the Council has acted unreasonably in failing to assess the proposal against Policy CS12 of the Knowsley Local Plan Core Strategy. This states that redevelopment of the Tower Hill Principal Regeneration Area will be facilitated, including small scale enhancements to retail appropriate to the scale and function of a local centre. There is dispute between the main parties as to the applicability of this policy. However, even if applicable, it does not follow that the appeal would have been avoided. The policy states that such development should be facilitated, but does not automatically grant permission. The Officer Report is clear that other aspects of the development plan are not met by the proposal, resulting in harm. As such, I consider that an appeal would still have occurred, such that there has been no wasted expense on the part of the applicant.
7. The applicant notes the Council's Environmental Health consultee recommended approval but later changed their position, with the original recommendation not being provided to the applicant. I acknowledge the applicant's concerns, however, there is nothing to prevent consultees from changing their position during the consideration of the application. In addition, it is the Officers who are ultimately responsible for the decision, not the consultee. I have found that the Council reached a rounded view in taking the decision and considered all relevant matters. In addition, given the ultimate decision and reasoning behind this, it is unlikely that provision of the original and subsequently superseded consultee response to the applicant prior to the appeal stage would have avoided the appeal, such that there is no wasted expense.
8. While I also acknowledge that the Council has not commented on the Crime Prevention Management Strategy provided with the appeal, and has provided comments from Merseyside Police with its appeal submissions that relate to an earlier application, I do not consider that this has resulted in unwasted expense. There is no obligation on the Council to comment on documents submitted with the appeal and, while the Merseyside Police comments relate to an earlier application, they nonetheless remain relevant to this appeal.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For the reasons given above, I refuse the application for an award of costs.

C Rafferty

INSPECTOR