

Costs Decision

Site visit made on 11 July 2022

by K L Robbie BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th October 2022

Costs application in relation to Appeal Ref: APP/Z2315/W/22/3294063 Land at Mount Pleasant, Mount Lane, Cliviger BB10 4TW

- 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 Propmax Developments Limited for a full award of costs against Burnley Borough Council.
 - The appeal was against the refusal of planning permission for the conversion of vacant building to 2-bedroom residential dwelling.
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Decision

1. The application 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 engagement of a planning consultant to defend an appeal is not itself an unnecessary cost unless unreasonable behaviour on the part of the Council can be demonstrated.
3. The Guidance is clear in setting out the circumstances in which a local planning authority could be vulnerable to an award of costs against it. It also goes on to advise of the circumstances in which a local planning authority's handling of the planning application prior to an appeal may lead to an award of costs.
4. In this instance the applicant is seeking, on substantive grounds, a full award of costs against the Council on the grounds that the Council unreasonably prevented or delayed development which should be permitted having regard to its accordance with the development plan, national planning policy and other material considerations. In addition, it is argued, the Council failed to produce evidence to substantiate each reason for refusal and that which was submitted was vague, generalised or inaccurate and unsupported by any objective analysis. The application for the award of costs largely rehearses the arguments made in the applicant's statement of case for the planning appeal relating to the four reasons for refusal.
5. Having carefully considered the applicants claim for costs, I do not agree that the Council have failed overall to substantiate or rationalise their reasons for refusing the application. Planning law is clear that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. It was the Council's assertion that the proposal did not accord with policies in the development plan and have set out clearly why they think that is

the case. Therefore, the Council has not acted unreasonably in refusing the application.

6. Nevertheless, a policy reference was omitted from the first refusal reason. The applicant prepared a statement of case based on the grounds in the refusal reason but also addressed Local Plan Policy SP1 in their statement. The Council subsequently clarified in their statement of case that this was the relevant policy to which the refusal reason should have referred. The Council referred clearly to the policy in the consideration of the issues in the Officer Report to which the applicant responded in detail. Whilst it is therefore unfortunate that the policy was not referred to in the reason for refusal, this does not amount to unreasonable behaviour in this instance.
7. The applicant states that the Council have not substantiated the first reason for refusal by failing to definitively quantify the number of unsustainable journeys that the proposal would generate. Although the number of journeys is likely to be low, Local Plan Policy SP1, nevertheless, seeks to encourage a sustainable form of development wherever possible. The Council have set out why they consider the development not to be a sustainable form of development. I do not consider that they have acted unreasonably by not quantifying the exact number of journeys which may be generated by the proposed development.
8. With regard to matters of character and appearance, the officers report is short and to the point. However, this is not a criticism and does not amount to unreasonable behaviour on the Council's part through vague, generalised or unsubstantiated assertions. Assessments of the impact upon character and appearance will almost inevitably be subjective in nature. I am satisfied that the Council have not acted unreasonably in this respect, and it cannot therefore be the case that unnecessary or wasted expense has been incurred by the applicant.
9. A structural survey was not requested by the Council during the course of the determination of the application, which the applicant asserts may have avoided the refusal reason. Be that as it may, pre-application advice to the applicant was clear that the Council required clear demonstration that the building was structurally capable of conversion. Furthermore, a structural survey nor any further evidence to support the condition survey submitted with the appeal. There appears to be no hard and fast guidance as to the type of report or survey the Council would accept in order to demonstrate the structural stability of a building, however, it must sufficiently demonstrate and not assume that a building is structurally sound. In this instance, I agree with the Council that the information submitted demonstrates that the building is capable of conversion but not its structural capability of doing so without significant interventions or rebuilding.
10. With regard to the grant of permission by the Council for a similar type of development not far from the appeal site shortly before the refusal of the appeal scheme, the Council have set out that their analysis of that application led them to consider that it complied with the requirement of the relevant policies in the local plan. It is not for me to second guess the Council's assessment of that scheme, and I have clearly set out my reasons in my decision why I agree with the Council that in this instance that the proposal does not comply with the requirements of the policies.

11. I therefore find that the Council's handling of the planning application does not amount to unreasonable behaviour. The Council's approach to the proposal relative to others does not in my judgement amount to an inconsistency of approach. The decision was a matter of planning judgement and given the planning history of the site could not be said to be 'Wednesbury' unreasonable. Accordingly, I do not consider that Council failed to properly evaluate or consider the merits of the scheme and therefore the appeal could not have been avoided.
12. My decision on the planning appeal sets out my reasoning as to why I agree with the conclusion reached by the Council. Those reasons also set out why I consider that the appeal could not have been avoided. There was not, as a consequence, unnecessary or wasted expense as the Council's case was well-founded and justified.
13. As unnecessary or wasted expense has not arisen, the application cannot succeed. For the reasons set out therefore, the application for an award of costs against the Council fails.

KL Robbie

INSPECTOR