
Costs Decision

Site visit made on 8 March 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2023

Costs application in relation to Appeal Ref: APP/M2515/W/22/3302162 West End Tap, 108 Newland Street West, Lincoln LN1 1PH

- 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 Nigel Delahey for a full award of costs against the City of Lincoln Council.
 - The appeal was against the refusal of planning permission for the change of use of ground floor bar, alterations and extensions, to provide 2 no. dwellings within the existing building and erection of a new dwelling to the rear of the site.
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. In this case, the appellant argues that the Council acted unreasonably in failing to substantiate its reasons for refusal at appeal following the decision to refuse the application contrary to the advice of its planning officers. This led to an unnecessary appeal, wasting both time and expense in order to obtain planning permission which should have been granted by the Council. The appellant also argues that the Council took too long to determine the application, but this is not a matter that is relevant to an award of costs.
4. The Council, acting in its role as local planning authority, is not bound to accept the advice of its officers. However, the Council must substantiate each reason for refusal on appeal.
5. In this instance the Council refused the application for two reasons. Firstly, it was said that the applicant had failed to demonstrate in sufficient detail that the public house was no longer a viable business. Although not requested during the course of the application, this was a reasonable criticism. In response, a detailed viability appraisal by specialist leisure surveyors Fleurets was submitted as part of the appeal. This set out the detailed information required, but the Council failed to engage with this report, arguing that advice from a third party was required and it was not possible to do this within the timescale of the appeal process. However, the appeal was lodged on 30 June 2022, confirmed as valid on 12 August 2022 and started on 31 August 2022 with a deadline for the Council's appeal statement set for 5 October 2022.

Ample time was therefore available and extra time could have been requested. The upshot was that no evidence was produced by the Council to support its reason for refusal or to counter the appellant's report. It was reasonable to require the report in the first place but unreasonable not to respond to it, provide other evidence or alternatively withdraw the Council's opposition to the appeal once the Fleurets report had been received.

6. The second reason was that the service provided by other public houses in the area may not be of equivalent value to the community. Whilst reasonable to require an analysis of alternative facilities, this was provided in the Fleurets report which demonstrated their availability. The Council did not respond to these findings or produce its own no evidence. Again, whilst reasonable to require the information, it was unreasonable not to respond to it, provide other evidence or alternatively withdraw the Council's opposition to the appeal once the Fleurets report had been received.
7. The Council therefore behaved unreasonably by failing to substantiate its reasons for refusal and continuing to pursue its opposition to the appeal once the Fleurets report had been received. By delaying a development which should clearly be permitted the Council have acted unreasonably and caused the appellant unnecessary and wasted expense by prolonging the appeal process. However, the unreasonable behaviour only commenced at the point of failing to respond to the Fleurets report when the appeal was lodged. The costs award is therefore limited to the costs incurred after that date and excludes the cost of preparing the Fleurets report itself.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a full award of costs is justified limited to those incurred after the receipt of the appeal on 30 June 2022.

Costs Order

9. 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 the City of Lincoln Council shall pay to Mr Nigel Delahey the costs of the appeal proceedings described in the heading of this decision, the costs limited to those incurred after 30 June 2022 and excluding the cost of the Fleurets report.
10. The applicant is now invited to submit to the City of Lincoln 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.

David Reed

INSPECTOR