
Costs Decision

Site visit made on 6 January 2023

by S Poole BA(Hons) DipArch MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 March 2023.

Costs application in relation to Appeal Ref: APP/D5120/W/22/3306922 Foresters Arms, Upper Wickham Lane, Welling DA16 3ER

- 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 Wellington Pub Company, for a full award of costs against the Council of the London Borough of Bexley.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission for the erection of two, 2-bedroom, semi-detached dwellings and the reconfiguration of the public house car park.
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Decision

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

Reasons

2. National Planning Practice Guidance (the Guidance) 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. The Guidance advises that local planning authorities are at risk of an award of costs against them if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. In the view of the appellant the Council has acted unreasonably. It is argued that the planning appeal was necessary due to the withdrawal of the planning application from the Council's Planning committee at late notice and the absence of a proper explanation as to why the Council believed the viability report submitted with the application was inadequate or incorrect in its findings. It is also suggested that the Council was slow to procure the independent viability assessment.
5. The planning application was scheduled to be presented to the Council's Planning Applications Committee on 4 August 2022 with a recommendation of approval. Two days prior to the Committee the Council advised that following a review of the application by the Head of Planning and Regulatory Services it was considered that the proposal had not been sufficiently scrutinised in respect of its impact on the viability of the public house. The application was therefore withdrawn from the Committee agenda.

6. The impact of the proposal on the viability of the public house was a key consideration in the determination of the planning application. This is not a common planning issue and not therefore a matter that the Council would have in-house expertise to fully assess. In these circumstances it was entirely reasonable for the Council to seek an independent review before presenting the application to the Committee, particularly in the light of local opposition to the proposal. Given the planning application was being supported by officers, it is evident that the appellant's viability assessment was not viewed as inadequate or incorrect. However, given the circumstances, the Council wanted a second opinion on the matter. Seeking an independent review was entirely warranted and reasonable.
7. The independent review, which agreed with the conclusions of the appellant's viability assessment, is dated 21 November 2022. I note there was some delay in the procurement of this assessment, which may have been outside the Council's control. However, the report was produced in a reasonable timeframe and would have enabled the planning application to have been presented to the Council's Planning Committee in early 2023, had an appeal not been lodged.
8. Whilst there was delay in the Council's processing of the planning application, this was for understandable reasons and did not make the lodging of an appeal necessary.
9. For these reasons I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Poole

INSPECTOR