
Costs Decision

Site visit made on 28 February 2023

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 29 March 2023

Costs application in relation to Appeal Ref: APP/F1040/W/22/3303885

Knights Lodges, Knights Lane, Bretby, Burton-on-Trent DE15 0RT

- 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 D Willshee for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for the erection of a leisure building with associated access, parking and landscaping.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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 process¹.
3. There are four claims to assess. Firstly, whether the Council prevented development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Secondly, whether the Council failed to produce adequate evidence to substantiate its reason for refusal by making vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis. Thirdly, whether the Council refused planning permission on a planning ground when the attachment of suitable conditions would have enabled the proposed development to go ahead. Lastly, whether the behaviour of councillors at the planning committee when determining the application was biased and unreasonable.
4. In terms of the first two claims, the officer recommendation in relation to the application was to grant permission. However, planning authorities are entitled not to accept an officer recommendation, so long as reasonable planning grounds are given for taking a different decision. In its reason for refusal the Council explained that the design of the proposed building would result in harm to the character and appearance of the area, citing those policies of the development plan the proposal would be contrary to. Within the Council's appeal statement, in the comments on the appellant's grounds of appeal, the Council expanded upon its reason for refusal. Although for the reasons given in the appeal decision I did not agree with the Council, such matters are a question of planning judgement. Through the wording of its reason for refusal and its appeal statement the Council presented

¹ Paragraph: 028 Reference ID: 16-028-20140306, 'Appeals', 'Why do we have an award of costs?'

evidence that was sufficiently respectable to substantiate its decision to refuse permission. As a result, it did not act unreasonably.

5. In relation to the third claim, the Council's reason for refusal related to the scale of the proposed building, which would be materially larger than the two extant permissions for a leisure building on the site. Given this fundamental objection to the proposal, I am not persuaded that this matter could be overcome by condition.
6. Turning to the last claim, I recognise that the appellant was perturbed at the comments he stated were made by certain councillors at the planning committee in relation to the application. The Council has not commented on this matter and the minutes of the planning committee are silent on this issue. Notwithstanding what was or was not said, I can only determine a costs application on the basis of the actions of the Council, rather than the comments stated to have been made at the planning committee. For the reasons given earlier, I have found that the Council through the content of its issued decision notice and appeal statement has substantiated its decision to refuse planning permission.
7. Taking all these matters into account, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated. An award of costs is therefore not justified.

Ian Radcliffe

Inspector