



Costs Decision

Site visit made on 28 February 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2023

Costs application in relation to Appeal Ref: C2741/W/22/3305435 The Magnet Public House, Osbaldwick Lane, York YO10 3AY

- 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 Moorside Developments Ltd for a full award of costs against City of York Council.
 - The appeal was against the refusal to grant planning permission for the demolition of the existing buildings and erection of 8no. residential dwellings with associated parking and landscaping.
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Decision

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

Reasons

2. The application for an award of costs will be familiar to both parties. Consequently, I shall not repeat the submission in full within this decision. Government guidance on the award of costs is set out in the Planning Practice Guidance (PPG). Paragraph 030 of that guidance notes that a party may have costs awarded against them in relation to appeal proceedings if they have behaved unreasonably and that behaviour has led another party to incur unnecessary expense. Those two matters are pre-requisites for an award; if there has been no unreasonable behaviour or no wasted expense an award will not be justified.
3. The applicant seeks an award of costs on the basis that the Council has failed to produce evidence to substantiate each reason for refusal on appeal which has resulted in unnecessary expense of the costs of pursuing the appeal. When it comes to the interpretation of policy, a qualified planning officer is in a better position to determine whether there has been a breach of a policy as opposed to a planning committee made-up of lay members. The judgement made by the Case Officer was in recognition of the Planning Authority's duty to comply with section 70(2) of the principal Act.
4. They assert that a local Councillor mounted a persistent and meretricious campaign against the proposals made by the applicant from the outset. They consider that the Committee's decision to override the case officer's recommendation was influenced by the Councillor's views and assertions, and make reference to a defamatory letter.
5. The Council state that the Planning Committee acted reasonably in determining the application and in arriving at the reason for refusal. During the debate at Planning Committee, members made reference to other appeals involving the

loss of public houses. They state these references contribute to illustrating that members of the Planning Committee possess sufficient knowledge of the material planning considerations relevant to this case.

6. The Council highlight that there is no evidence, from the Committee Meeting or otherwise, that Members' decision on this application were in any way inappropriately affected by the ward Councillor. The Councillor's involvement at the Committee Meeting was not in breach of any protocol regarding Member conduct nor the function of the Planning Committee. No complaints have been received by the Council regarding the Councillor's conduct in respect of the case or the Committee Meeting.
7. Council Members are entitled to go against the professional advice of officers as long as it is clearly demonstrated why the proposal is unacceptable and clear evidence is provided to substantiate that reasoning. The planning officer had found that the loss by demolition of the non-designated heritage asset would be outweighed by the benefits. Nonetheless, adequate evidence was submitted to show that the Committee, and Council, did not apply its judgement in an unreasonable manner.
8. The application required an exercise of planning judgement, and it was not unreasonable for the Planning Committee to find that the benefits of the development would not outweigh the loss of the non-designated heritage asset. There is also no substantive evidence to demonstrate that the Councillor inappropriately affected the Committee's decision.
9. Consequently, whilst I have found in favour with the applicant's appeal case, I do not consider that the Council has prevented development that should clearly have been permitted, having regard to the development plan, national policy and other material considerations. For the reasons set out above, the applicant has not shown that the Council's refusal of planning permission was unreasonable and that no wasted or unnecessary expense has been incurred by the applicant in the appeal process. I conclude therefore, that the application for an award of costs is refused.

L Wilson

INSPECTOR