



Costs Decision

Site visit made on 28 February 2023

by H Jones BA (Hons) DipTP MRTPI

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

Decision date: 22 May 2023

Costs application in relation to Appeal Ref: APP/P2935/W/23/3314515 The Dyvels Hotel, Station Road, Corbridge NE45 5AY

- 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 Punch Pubs & Co for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of planning permission for formation of pergola and decking within existing beer garden.
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Decision

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

Reasons

2. The 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 process.
3. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples of unreasonable behaviour with respect to the substance of the matter under appeal include acting contrary to, or not following, well-established case law, failing to produce evidence to substantiate the reasons for refusal or producing vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. Procedural behaviours that would amount to being unreasonable can include the provision of information that is shown to be manifestly inaccurate or untrue.
4. Within their Officer Report, and in regard to the appeal site, the Council stated, "Whilst the site lies outside of the Corbridge Conservation Area, it is highly visible, particularly when travelling along the A695, on the approach to and from the Conservation Area." In refusing the planning application, the Council concluded that the development subject of the appeal would be dominant, visually intrusive and would result in harm to the setting, character and appearance of the host building and the surrounding area. The degree of visibility of the appeal site and the locations where the development could be seen from would, therefore, have formed an important factor in the Council finding this alleged harm.
5. The applicant's submissions in part seek to demonstrate that the appeal site is not highly visible from the A695, this includes a photographic survey. Since that time the Council have sought to clarify that the site is highly visible when travelling from the south on the B6529, from the direction of the A695. They have also submitted that this was set out in the Officer Report. However, there

is no reference to the B6529 within the Officer Report. In drawing particular attention to one road or location, only to substitute it by reference to another, amounts to vague behaviour by the Council.

6. So as to support their case, the applicant was required to address the allegations made in relation to both the A695 and B6529, incurring them additional expense. Furthermore, in my appeal decision, I have identified that the appeal site is not highly visible from the A695 and that the more available views are from the B6529. I therefore also find that the Council's Officer Report exhibited some inaccuracies in the assertions made about the proposal's impact, matters which the applicant then sought to rebut within the appeal process.
7. The Warwick District Council High Court Judgement¹ (the Judgement) established that it is a matter of fact and degree as to whether detached buildings can readily be considered as extensions of other buildings even though they may not physically be connected. To determine whether a detached building amounts to being an extension necessitates a detailed analysis. If, following that analysis, the detached building proposed was deemed an extension, it could also not amount to inappropriate development within the Green Belt, provided that it would not result in disproportionate additions over and above the size of the original building. In my appeal decision I have concluded that the proposal would amount to an extension and, by reason of not being a disproportionate addition to the original building, would not amount to inappropriate development.
8. In refusing planning permission, the Council deemed that, in general, the proposal could not meet any of the exceptional forms of development as set out within paragraphs 149 and 150 of the National Planning Policy Framework. Such an approach does not follow the Judgement. However, I am mindful that the Judgement was handed down quite recently in August 2022, some time after the planning application was submitted and, only shortly before it was determined. In such circumstances, it was not unreasonable of the Council to be unaware of it at the time they made their decision.
9. To further support their costs application and demonstrate that, in their view, the Council have been inconsistent in their approaches to assessing development within the Green Belt, the applicant has drawn my attention to a number of other planning applications determined by the Council. However, the full details of each case have not been submitted and, as a result, it is not possible to draw accurate comparisons between those schemes and that proposed in this appeal.
10. Finally, the applicant submits that the Council have also behaved unreasonably in finding that the host property is of local historic interest. The PPG emphasises that non-designated heritage assets should be clearly identified and that it can be helpful if local planning authorities keep a local list of non-designated heritage assets. However, it also states that in some instances, non-designated heritage assets may also be identified during decision making processes.
11. I acknowledge that in their comments on the planning application, the built heritage and design officer, did not identify the host property as being of any

¹ Warwick DC v SSLUHC & others [2022] EWHC 2145 (Admin)

particular local historic or architectural interest. Despite this, it is reasonable for the planning officer to not adopt the views of their consultees so long as their views can be substantiated. To this end, the Council have submitted updated comments from the built heritage and design officer. The Council have also submitted comments from the built heritage and design officer in relation to a previous planning application at the appeal site in which they refer to the host property as a non-designated heritage asset.

12. It can be seen from my appeal decision that I am satisfied that the host property has a degree of heritage significance which warrants its consideration as a non-designated heritage asset. Therefore, in finding that non-designated heritage assets may be identified through decision making processes, and that it is appropriate for the Dyvels Hotel to be considered as such, it follows that the Council have not acted unreasonably in treating the host property as a non-designated heritage asset.
13. The Council have set out some background in relation to the appeal scheme including a history of planning applications at the appeal site. Whilst I note that given this background, the Council's stance on the proposed development may well have been known to the applicant, this does not alter that I have identified some unreasonable behaviour by the Council.

Conclusion

14. The Council's analysis of the visibility of the appeal site from the A695 has been vague and misleading with consequential inaccurate assertions made about the proposal's impact.
15. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Despite these findings, and despite my appeal decision concluding that the appeal be allowed, it is not the case that the unreasonable behaviours exercised by the Council clearly could have led to the entire appeal and, therefore, all expenses associated, being avoided. Therefore, I find that a partial, rather than a full award of costs is justified.

Costs Order

16. 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 Northumberland County Council shall pay to Punch Pubs & Co the costs of the appeal proceedings described in the heading of this decision limited to the those costs incurred in contesting and demonstrating the visibility of the appeal site from the A695 and the B6592; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Northumberland County 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.

H Jones

INSPECTOR