



Costs Decision

Site visit made on 9 May 2023

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Costs application in relation to Appeal Ref: APP/L2250/W/22/3313299 The Black Horse Inn, 366 Canterbury Road, Densole CT18 7BG

- 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 Partnerships (PML) Limited for a partial award of costs against Folkestone and Hythe District Council.
- The appeal was against the refusal of planning permission for the erection of three dwellings to the north of the public house, with associated parking and landscaping, and the reconfiguration of the public house car park and beer garden, following demolition of single storey side and rear extensions.

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant argues a partial award of costs is justified because of the unreasonable behaviour of the Council in respect of the fourth reason for refusal concerning the parking situation. The applicant explains that the issue with the right of way across the frontage of the Public House, and where the five car parking spaces is proposed, is a private property matter and not a material planning consideration. Even if it was to be considered to be a relevant planning consideration, the applicant argues there is the ability for the applicant to give two months' notice to the beneficiaries of the right of way that the route is being amended.
4. The applicant has detailed that by giving notice and amending the right of way the car parking spaces can be provided. Furthermore, it is explained that the applicant attempted, on several occasions, to advise the Council of this background and that refusing the application for this reason was not tenable. This information included a letter from lawyers acting on behalf of the applicant setting out this matter, and enclosed the Land Registry details and highlighted the ability to alter the right of way to provide the parking.
5. The applicant considers that, subsequently, refusing the application on the basis that the application failed to demonstrate sufficient off-street parking was unreasonable and this led to unnecessary and wasted expense in the appeal process.

6. The Council was given the opportunity to respond to this application for costs but has made no representations.
7. The application was refused for four reasons. In terms of the first three reasons for refusal, while I have come to a different view from the Council, the issues concerned matters of judgement. The Council provided a planning case that was reasonable in terms of these reasons for refusal. Consequently, the appeal could not have been avoided.
8. However, in respect of the fourth reason for refusal, at the application stage the Council had before it legal and other advice from the applicant that explained that there was a legal mechanism available to the applicant that would allow the right of way to be amended and the five spaces at the front of the site to be provided. This matter was examined in the Planning Report which, in summary, raised the concern that until this is resolved the scheme is deficient in terms of parking standards as it was argued strictly speaking those spaces could not be relied on.
9. At the appeal stage, the applicant rehearsed similar arguments and supplied the same legal advice. The Council, in its appeal statement, set out further advice from the Highway Authority who explained, amongst other things, that a Grampian condition could be applied which would prohibit the development until notice is served on the adjoining landowner in order to provide the 19 spaces. As a consequence, the Council confirmed that the reason for refusal would no longer be contested.
10. The Guidance explains that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. Although a view may be taken that the right of way issue is a private matter, regardless of this, the Council did not give sufficient consideration at the application stage as to whether the parking issues could have been addressed by a pre-commencement or Grampian type condition. If it had done so the reason for refusal could have been avoided.
11. At the appeal stage, the Council came to the conclusion that the parking concerns could be addressed by a condition and that it did not wish to contest the issue. This helps to demonstrate that this conclusion could have been reached at the application stage. The planning circumstances at the appeal stage were not materially different to the evidence before the Council at the application stage and it did not provide any meaningful evidence to substantiate the fourth reason for refusal as part of its appeal submissions.
12. This situation amounts to unreasonable behaviour. The fourth reason for refusal should have been avoided. The applicant was required to set out the case again on the parking issues at the appeal stage and this led to wasted and unnecessary expense in the appeal process.

Conclusion

13. In the light of the above analysis, I have found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified in terms of the applicant having to address the fourth reason for refusal at the appeal.

Costs Order

14. 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 Folkestone and Hythe District Council shall pay to Punch Partnerships (PML) Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appeal process in addressing the Council's fourth reason for refusal, such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Folkestone and Hythe District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

David Wyborn

INSPECTOR