



Costs Decision

Site visit made on 6 July 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2023

Costs application in relation to Appeal Ref: APP/V2635/D/23/3318756 Old Butchers Shop, 54 Back Street, South Creake, Norfolk NR21 9PG

- 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 and Mrs Garfoot for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of a section of the south boundary wall.
-

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. In this instance the applicants are seeking, on substantive grounds, a full award of costs against the Council on the grounds that their reasons for refusal were vague and generalised. Furthermore, the applicants' claim that the proposed development amounts to permitted development¹.
4. Having carefully considered the applicants' claim for costs, I do not agree that the Council have failed overall to substantiate or rationalise their reasons for refusing the application. Planning law is clear that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. It was the Council's assertion that the proposal did not accord with policies in the development plan, and I am satisfied that they have set out clearly why they think that is the case.
5. The applicants assert that the Conservation Officer's comments lent heavily on the comments made by the County Highways Officer. Whilst there may be some cross-over between consultee comments, the Council's case is clearly set out in the officer report and in any event the decision maker is not bound by comments made by any one consultee.
6. I am satisfied that the decision was a matter of planning judgement and could not be said to be 'Wednesbury' unreasonable. Accordingly, I do not consider that Council failed to properly evaluate or consider the merits of the scheme and therefore the appeal could not have been avoided.

¹ Development permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

7. The applicants consider that the proposal constitutes permitted development, nevertheless they made a planning application which was determined by the Council. The applicants' appeal statement is accompanied by an appeal decision where an alternative view was reached, however, as this relates to an enforcement appeal made under the Scottish planning system, the circumstances are not directly comparable to the case before me, and it is not ordinarily the role of appeals made under s78 of the Town and Country Planning Act 1990 (the Act) to examine matters of lawfulness. Indeed, it is open to the appellant to apply to have such matters determined under sections 191 or 192 of the Act for which there is also a right of appeal.
8. The appeal has not led the applicants to incur unnecessary or wasted expense to demonstrate their case. Simply spending time and instructing an agent to undertake an appeal is not considered an unreasonable expense in this instance.
9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. As a result, an award of costs is not warranted and accordingly refused.

KL Robbie

INSPECTOR