
Costs Decision

Site visit made on 4 September 2023

by Edwin Maund BA (Hons) Dip UP MRTPI

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

Decision date: 18 September 2023

Costs application in relation to Appeal Ref: APP/ X4725/W/22/3313422 Wakefield College Thornes Park Centre, Horbury Road, Wakefield, WF2 8QZ

- 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 Penny Appeal for a full award of costs against City of Wakefield Metropolitan District Council.
 - The appeal was against the refusal of the Council on an application for Full planning permission for change of use from a F1 (Non-residential institution) to a flexible Class E (offices/ café), F2 (local community use) and Sui Generis Use (Theatre).
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Decision

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

Reasons

2. The Applicant submits that the Council has acted unreasonably in that it has gone against the advice of its professional officers without good reason. In seeking a full award of costs the Applicant argues that neither reason for refusal has been substantiated and consequently the application should have been approved, thus avoiding the need for the appeal.
3. The Council argue that Members are entitled to place greater weight on the benefits of the park than Officers had, in concluding that there would be an adverse effect on the enjoyment or amenity of the park or on public safety.
4. I would agree it is for the decision maker to apportion weight as they see fit, but this needs to be justified by evidence, not assertion. No evidence has been adduced that contradicts the Council's own highway evidence, or the subsequent Transport Assessment supplied by the Appellant. The second reason for refusal therefore has no foundation.
5. In considering the case, the Council Committee report clearly set out measures that could adequately provide safeguards where it was deemed necessary to do so. No further explanation was provided, as to why these might either be inappropriate or would not meet the tests for conditions. Nor was material evidence presented that set out what harm would arise to the enjoyment or amenity of the park if the change of use were to proceed within the constraints of the recommended conditions.
6. The Council maintained that the proposed change of use would increase the risk to safety within the park by virtue of increased traffic and extended or

different operating hours. This despite the Council's own highway advice indicated the traffic usage would reduce. The assertion that there would be additional harm was neither sustained by survey information, or on any form of quantitative assessment that could justify this stance.

7. No evidence was presented that demonstrated why on an evidential basis the road that serves the appeal site would be unsuitable or how the use of the appeal site would increase risks to users within the park.
8. Nor do I find that objective evidence was presented that could reasonably explain the conflict perceived between users of the park and the proposed use of the existing buildings for the uses proposed.
9. The Planning Practice Guidance (the PPG) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
11. The Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
12. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should reasonably have been permitted.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

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 City of Wakefield Metropolitan District Council shall pay to Penny Appeal UK the costs of the appeal proceedings described in the heading of this decision.
15. The Applicant is now invited to submit to City of Wakefield Metropolitan District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Edwin Maund

INSPECTOR