



Costs Decision

Hearing held on 26 September 2023

Site visit made on 26 September 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 October 2023

Costs application in relation to Appeal Ref: APP/F3545/W/23/3321624 28 Churchgate Street, Bury St Edmunds, Suffolk IP33 1RG

- 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 G Downes for a full award of costs against West Suffolk Council.
 - The appeal was against the refusal of planning permission for 'change of use of ground floor and basement floor of premises from hairdressers to dwelling. Internal alterations. Remove modern shopfront and replace with new door and four windows to match architecture of upper floors.'
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Decision

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

The submissions for Mr G Downes

2. The costs application was submitted in writing in advance of the Hearing. It is therefore a matter of record and there is no need to rehearse it here. Additional points made orally at the Hearing submit that the Council has not clearly or precisely explained why similar schemes were allowed while the appeal proposal was refused. It has not submitted an appeal statement, and it introduced concerns during the Hearing that were not set out in the reasons for refusal.

The response by West Suffolk Council

3. A response was made in writing in advance of the Hearing. It is therefore a matter of record and there is no need to rehearse it here. Additional points made orally at the Hearing submit that the failure to submit an appeal statement was unfortunate, but the Council's case was set out in the officer delegated report. There may be some similarities with example developments referred to by the applicant, but each case should be determined on its own merits.

Reasons

4. The Planning Practice Guidance ('the PPG') advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. 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 given in the PPG of behaviour that may give rise to a substantive award against a local planning authority include not determining similar cases in a consistent manner, and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

5. In making the planning application, the applicant referred to planning permissions granted by the Council including for the change of use of other buildings within the Bury St Edmunds town centre area to dwellings. From the information before me, I agree with the appellant that there appears to have been some inconsistency in how the Council has applied Policies DM30 and DM35 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document 2015 in considering past applications.
6. However, while I accept that there are some similarities with the appeal proposal, it is unclear from the information provided that any of the examples are directly comparable to the appeal scheme in all respects and relevant considerations which would inform the overall assessment of proposals and judgements made on them. Although the example permissions are material planning considerations, I find as a consequence that reaching different overall decisions would not necessarily be wholly unwarranted.
7. Moreover, I do not consider the Council's application of policies in respect of the appeal proposal to be fundamentally flawed or unsound. The Council did not submit an appeal statement, but it was entitled to rely on its officer delegated report and that is not in itself evidence of unreasonable behaviour. The delegated report is relatively brief, but concern that a loss of a commercial unit could reduce footfall to an area with a consequent effect on town centre vitality and viability is not a novel concept. Together with the oral evidence at the Hearing I consider the Council's concerns over the effects of the proposal have been adequately explained with clear reference to development plan policies, and I do not find its assertions to be unduly vague or generalised, nor lacking in basis.
8. I have ultimately come to a different view in relation to effects on employment space, but this in part reflects the additional evidence provided as part of the appeal in relation to available alternative premises and the greater length of time the property has now been marketed. This evidence also informed my assessment of effects on the town centre. In addition, my conclusion that the appeal should be allowed was informed by the specific circumstances of the development and the benefits of the proposal as part of the overall planning balance. This is a matter of judgement, and it was not unreasonable for the Council to have reached different conclusions.
9. Notwithstanding the example developments referred to by the applicant and some apparent inconsistency in how policies have been applied in the past, I find given these factors that the Council's approach to the appeal application and decision to refuse permission was not in itself unreasonable. Consequently, I am not persuaded that the appeal was unnecessary or avoidable, and I find in this case that there has not been wasted expense in the appeal process that would justify an award of costs.
10. At the Hearing, the Council queried the justification for the price at which the appeal property had been marketed. This had not been clearly raised as a concern in its evidence prior to the Hearing, but the applicant was able to respond during the event. Even if I were to find that the introduction of the price concern at a late stage was unreasonable, it has not been demonstrated that this caused the applicant unnecessary or wasted expense in the appeal process.

11. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a full award of costs is refused.

J Bowyer

INSPECTOR