
Costs Decision

Site visit made on 28 September 2023

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 24 October 2023

**Costs application in relation to Appeal Ref: APP/F1040/W/23/3117999
Land adjacent to First Fence Ltd, Kiln Way/Woodhouse Street, Woodville,
Swadlincote DE11 8EA**

- 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 V Kotecha, First Developments Holdings Ltd for a full award of costs against South Derbyshire District Council.
 - The appeal was against the decision of the Council to refuse planning permission for the change of use to existing land and turning head resulting from the development of the Kiln Way Link Road for the creation of 47no. car parking spaces, including 24no. electric vehicle charging points, erection of 10no. cycle spaces, staff seating area and landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs irrespective of the outcome of the appeal.
3. The basis of the Appellant's application for costs is that the Council have acted unreasonably by preventing development which should clearly have been permitted, having had disregard to the scheme's accordance with the development plan, national policy and the material considerations as set out in the Report to Planning Committee.
4. The officer of the Council recommended the scheme for approval having taken full account of the statutory consultees who raised no objections to the scheme. The Appellant considers that the proposal was weighed against the whole development plan and deemed to be fully in accordance with its policies, as confirmed by the professional advice of the Council's officers. Furthermore, the reason for refusal reached by the Planning Committee was contradictory to the advice of the professional officers as set out in the Committee Report's Conclusions, and comprises an unsubstantiated, vague, generalised and inaccurate assertion about the proposal's impact, which is unsupported by any objective analysis.

5. The Appellant considers that no new cogent evidence or material considerations were raised to justify the refusal of the scheme. Consequently, this constitutes unreasonable behaviour that has directly resulted in the Appellant incurring the unnecessary expense of this Appeal.
6. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. To some extent, the consideration of the visual impact of the proposal is a subjective judgement. In this case, members of the Planning Committee were entitled to make their own assessment of the impact of the scheme on the character and appearance of the area. In exercising their planning judgement, members concluded that such impact would be of an extent that would cause conflict with relevant policies in the development plan.
8. I consider that the reason for the refusal of planning permission was relevant to the application and clearly states the policies of the South Derbyshire Local Plan Part 1 (2016) (the Local Plan) that the proposed development would be in conflict with. The evidence provided in this appeal demonstrates that members were aware of the benefits of increased parking and the additional planting but considered that these would not outweigh the adverse impact on the character and appearance and visual amenity of the area. Consequently, conflict with the provisions of Policies BNE1 and BNE4 of the Local Plan was identified.
9. Accordingly, I do not find that the Council failed to properly evaluate the application or failed to properly consider the merits of the scheme. The reasons for the refusal of planning permission were adequately stated by reference to the appropriate policies contained in the development plan that the proposal was in conflict with. I have found that the Council had reasonable concerns about the harm to the character and appearance of the local area which justified its decision. Just because I have found differently from the Council this does not mean to say that the Committee's concerns had no basis. As such, I do not find that the Council failed to properly consider the merits of the scheme and therefore the appeal could not have been avoided.
10. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified.

Stephen Normington

INSPECTOR