



Costs Decision

Site visit made on 11 October 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th November 2023

Costs application in relation to Appeal Ref: APP/X4725/W/23/3316102 14 Avondale Street, Wakefield WF2 8DP

- 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 Ryan Beaumont for a full award of costs against Wakefield Council.
 - The appeal was against the refusal of planning permission for development described as 'proposed change of use from ground floor hot food takeaway (Use class Sui Generis) and first floor residential apartment (Use class C3) to 10-bedroom HMO (Use class Sui Generis), demolition of existing garage/store and erection of two storey extensions proposed to the rear and side and external alterations at 14 Avondale Street, Wakefield, WF2 8DP.'
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Decision

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

The submissions for Mr Ryan Beaumont

2. The Council's reasons for refusal are based on vague, generalised or inaccurate assertions that are contradictory and unsubstantiated, and these conclusions conflict with the advice provided by the Council's Officers.

The response by Wakefield Council

3. Members have the right to overturn Officers' recommendations. In this case, it was reasonable for the Council to conclude that the proposal would be unacceptable for the reasons given and that appropriate reference has been made to relevant development plan policies which support the reasons for refusal. The Council has provided sufficient evidence to support its reasons for refusal.

Reasons

4. 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.
5. The PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal.
6. Notwithstanding the Planning Committee did not agree with the Officer recommendation, the reasons for refusal plainly identify the Council's concerns.

They also set out the planning policies contained in the development plan with which the Council consider the proposal would be in conflict.

7. The relevant planning policies were clearly referenced in the Officer's report to the Planning Committee, and elected Members would be aware of their content and purpose.
8. It will be seen from my decision that this is not a case where development should clearly have been permitted. However, when an appeal is made against the Council's decision, it is incumbent upon the Council to justify its reasons for refusal using reasonable evidence. I do not consider that the Council acted unreasonably in refusing the planning application, and, for the most part, the reasons for refusal reflect the genuine and legitimate concerns expressed by elected Members and the local community.
9. However, the Council presented reasons for refusal concerning the adequacy of internal communal space that did not reflect the clear advice provided by Officers regarding the Council's own guidance on internal space standards for Houses in Multiple Occupation (HMO); and the effects of the proposal on highway safety that did not reflect the clear advice provided by the Highway Authority following the submission of a substantially amended and reduced scale of proposal presented by the applicant.
10. No substantive evidence has been presented to support these reasons for refusal and, while elected Members are not bound to follow the advice of their professional advisors, where they deviate from that advice in their decision making, they must present cogent and justified reasons for departing from that advice. This has not happened in this case.
11. As a result, the applicant has gone to the expense of presenting evidence against two largely unsubstantiated reasons for refusal. I therefore find that the Council has acted unreasonably in respect of persisting with part of its second reason for refusal where it relates to internal space standards expected in HMOs, and its third reason for refusal in respect of highway safety associated with the adequacy of car parking that would be available to serve the proposal. This has caused the applicant to incur unnecessary expense in the appeal process.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to part of the Council's second reason for refusal and its third reason for refusal only, and that a partial award of costs is justified.

Costs Order

13. 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 Wakefield Council shall pay to Mr Ryan Beaumont, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in responding to the Council's second and third reasons for refusal of planning permission only; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Wakefield 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.

David English

INSPECTOR