



Costs Decision

Site visit made on 14 November 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Costs application in relation to Appeal Ref: APP/V4250/W/23/3322773 Oak Tree Inn, 150 Belle Green Lane, Ince, Wigan WN2 2ET

- 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 Rai of Axios Building Consultants Limited against Wigan Metropolitan Borough Council.
- The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission. The application sought planning permission for demolition of existing ground floor extension to the rear of the building, change of use of the ground floor only from A4 (Pub) to A1 (Shops) and the erection of a new single storey flat roof rear extension to provide new modern shop/ retail sales area accessed to the side via Russell Street via a ramp/ step access. Retention of the existing 1st floor residential flat accommodation accessed via Bell Green Lane.

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. The applicant claims, in summary, that the Council acted unreasonably in not determining the application within the prescribed period of a decision, in not entering into positive and proactive communication with the applicant during the consideration of the application, in relying on vague and generalised assertions, and in not permitting a scheme which complied with local and national policy.
4. The Council have rebutted the claim and provided copies of correspondence between the main parties.
5. From the evidence before me the applicant was aware of the Council's views on the scale of the extension as a result of communication during the application. There is no legal requirement for the Council to negotiate on a live planning application. However, in this case, the Council were in communication with the applicant and made the applicant fully aware of the concerns over the design of the proposal. The correspondence submitted shows evidence of the Council suggesting detailed amendments to the scale and design. The Council, therefore, did not act unreasonably in this regard.

6. The lack of a decision being issued by the Council has resulted in some delay. The Council could have issued a decision between receipt of the email from the applicant advising of the intention to submit an appeal against non-determination and receiving the appeal submission. However, the Council were not at fault from the delay in the submission of the appeal.
7. Furthermore, the Council have now justified its position on the effect of the design of the appeal proposal in paragraphs 6.15 to 6.22 of the statement of case. This provides detailed evidence to substantiate the harm and conflict with Policy CP10 of the Wigan Local Plan Core Strategy Development Plan Document, 2013.
8. Whilst the applicant has incurred costs in submitting the appeal and has not achieved the outcome they had hoped for, it will be seen from the appeal decision that I concurred with the Council's assessment of the effect of the proposed development on the character and appearance of the existing building and the surrounding area.
9. The applicant has commented that the delay in approving the development has cost many thousands of pounds. However, although the appeal may have resulted in a loss of income from the proposed retail unit this is not a cost associated with the appeal. I have no substantive evidence before me that the delay in the determination of the application has resulted in unnecessary or wasted expense during the appeal process.

Conclusion

10. For the above reasons, I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated, thus the award of costs is not justified.

K Townsend

INSPECTOR