



Costs Decision

Site visit made on 9 January 2024

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Costs application in relation to Appeal Ref: APP/L3245/W/23/3323422 Edinburgh House, New Street, Wem, Shropshire SY4 5DB

- 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 Connexus Homes Ltd for a full award of costs against Shropshire Council.
- The appeal was against the refusal of the Council to grant planning permission for “the proposed demolition of two-thirds of Edinburgh House and change of use to the remainder (the former Police Station element) to create two floors of one and two bedroom apartments (10 apartments in total, across ground and first floors) with second floor remaining as office space (Class E); and construction of 18 new dwellings on land at Edinburgh House, Wem.”

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) sets out that parties in planning appeals are expected to behave reasonably. It goes on to say that where a party has behaved unreasonably, and that unreasonable behaviour has caused unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. The PPG sets out examples of behaviour which may give rise to an award of costs against the Council.
3. Against those examples, the applicant claims that the Council acted unreasonably by acting inflexibly, inconsistently and unreasonably in their application of their policies around open space, failed to justify why noise would be an issue in the proposal, determined the proposal on an issue that they knew to be in-hand, and gave no weight to the fall-back position which exists at the appeal site. The applicant claims that this unreasonable behaviour has been compounded by the failure of the Council to approach decisions in a positive and creative way. All of this led to the refusal of the application and the need for an appeal.
4. Much of the applicants’ complaint relates to the application period, rather than the appeal itself. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in considering whether or not costs should be awarded. I note however that during the appeal, the Council did withdraw their bat-related reason for refusal following the submission of additional evidence. I find nothing in the Council’s handling of the application which bears on whether or not their behaviour during the appeal.

5. In my main decision, I found that elements of the proposal did conflict with the development plan, and it is clear that there were legitimate areas of concern around various factors, including noise and the natural environment. The decision therefore required a degree of balance and the exercise of planning judgement in accordance with the requirements of the Act. That the Council carried out this exercise and reached a different conclusion to that of the applicant, and ultimately me, is not in itself unreasonable.
6. I accept that the Council did not give the fall-back position the level of weight which the applicant wished them to. However, given that any consideration of fall-back would simply have been one of the other material considerations considered in the application, there is nothing before me to suggest that had they given it more weight, their exercise of their own judgement would have resulted in a different result.

Conclusion

7. I therefore find that the Council has not demonstrated behaviour which could be considered unreasonable in the terms of the PPG, and which then resulted in unnecessary or wasted expense. As a result, an award of costs is not warranted, and the application is refused.

S Dean

INSPECTOR