

Costs Decisions

Site inspection on 28 May 2024

by John Whalley

Inspector appointed by the Secretary of State

Decision date: 10th June 2024

Costs application A

**Application by Mrs Renu Singh made in connection with appeals
refs: APP/M0655/C/23/3320797; APP/M0655/W/23/3319031
No. 125 Park Road, Great Sankey, Warrington WA5 3EU**

- The application was made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, and the Local Government Act 1972 Section 250(5).
 - The application was made by Mrs Renu Singh for a full award of costs against Warrington Borough Council.
 - The appeals were made by Mrs Renu Singh against an enforcement notice issued by the Council and a refusal by the Council to grant planning permission for use of a room in the dwelling as a beauty salon at No. 125 Park Road, Great Sankey, Warrington WA5 3EU.
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Decision

1. An award of costs is not made.

Submissions made by Mrs Renu Singh

2. The Council Officer's report confirmed the beauty salon use did not negatively impact upon any of the neighbouring amenities in terms of noise and disturbance.
 3. The Highway Authority had no issues in relation highway safety and parking. The concern about loss of privacy to the neighbouring occupant was said to be capable of mitigation by the installation of a 2m high fence constructed under permitted development rights.
 4. The other issue concerned the 2 security lights to ensure safe access in the dark. Again, that could have easily been overcome by a suitable condition. The Council had not dealt with the application in line with Para. 55 of the NPPF that states where issues can be overcome by conditions applications should be approved.
 5. The application had been refused based on the impact on neighbouring amenity despite the contradictory assessment in the Officer's report. There was no justification for refusal.
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Response by Warrington Borough Council

6. The Appellant's grounds for costs were that the planning application report contained errors, planning permission was refused and an appeal had become necessary. There was no explanation how costs had been incurred unnecessarily during the appeal process and there was no reference to NPPG and under which ground it was suggested the Council had acted unreasonably.
7. As set out in the Council's Enforcement Appeal Statement, the planning officer's report contained errors. However, the officer recommendation was to refuse planning permission on the application made.
8. The errors in the planning officer's report had no consequence for service of the enforcement notice. The imposition of conditions could not have made the development acceptable, as set out in the Council's Enforcement Appeal Statement.
9. The errors in the planning application report did not amount to unreasonable behaviour. The errors did not cause the Appellant to incur unnecessary costs. There were no grounds for costs to be awarded against the Council.

Inspector's conclusions

10. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process.
11. Warrington Borough Council accepted that the then planning officer's report had contained errors. But they said those errors did not affect the outcome of the planning application. The recommendation to Council Members was to refuse planning permission.
12. If an officer report recommends approval, council members are not bound by that recommendation. The members make the decision. But if they were to make a decision against their officer's recommendation, a reason or reasons should be provided in the decision. Here, however, Council Members agreed with the Officer's recommendation to refuse planning permission. Unless the reasons to refuse planning permission are aberrant or unsubstantiated, an applicant may either accept the decision or appeal on the merits of the cases. Disagreements on merit do not amount to a justification for an award of costs.
13. In this instance, the Council gave 2 reasons to refuse planning permission. The first said the salon use has an intensity that does not assist the continued viability and growth of the local economy. They said that could result in the loss of viable, accessible sites and buildings used for industrial/commercial purposes or other employment generating uses in local communities. I was not much persuaded on that point, bearing in mind the small scale of Mrs Singh's beauty salon business. It was, nevertheless a valid and pertinent reason based upon settled local planning policy.

14. The second reason for refusal, concern about the effect of Mrs Singh's clients' comings and goings in this residential location was, again, a valid and pertinent reason.
15. Essentially, this claim for an award of costs arises from a difference between the parties on planning merit. It was the Appellant's view that the issues raised by the Council could readily be overcome by the application of suitable planning conditions. But that is a matter for a not unusual consideration of the planning merits involved. No unreasonable behaviour by the Council in the conduct of the appeals was shown.
16. An application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. That was not done. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against Warrington Borough Council is not justified.

COSTS ORDER

17. No order as to costs is made.

Costs application B

Application by Warrington Borough Council made in connection with appeals refs: APP/M0655/C/23/3320797; APP/M0655/W/23/3319031, No. 125 Park Road, Great Sankey, Warrington WA5 3EU

- The application was made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, and the Local Government Act 1972 Section 250(5).
- The application was made by Warrington Borough Council for an award of costs against Mrs Renu Singh.
- The appeals were made by Mrs Renu Singh against an enforcement notice issued by the Council and a refusal by the Council to grant planning permission for use of a room in the dwelling as a beauty salon at No. 125 Park Road, Great Sankey, Warrington WA5 3EU.

Decision

18. An award of costs is not made.

Submissions made by Warrington Borough Council

19. The application was for a 'substantial' award of costs.
20. The Appellant said the small-scale nature of the business meant it could not be considered as having any consequence to the viability of the town centre. No evidence was produced to support that claim. There was no analysis to show the availability of alternative more suitable locations in local centres.

21. Substantive costs were incurred in responding to a ground of appeal not supported by evidence. The enforcement notice made it clear that a reason for serving the notice was due to the impact on impact upon viable, accessible sites and buildings used for commercial purposes.
22. The Appellant's ground (c) appeal sought to argue that the activity was not development despite having already acknowledged it was with the submission of a planning application. The Council had to address a ground of appeal without any substance.
23. The Appellant has mischievously attempted to exploit errors in the planning officer report to suggest that the Council decision would be to approve planning permission, when that was not the case. The Appellant also suggested that permitted development rights were relevant, when they were not, and indicated that the intensity of the activity with the number of visiting members of the public visiting the premises is irrelevant, when clearly that was a key consideration in the appeal. The Council had to address all those aspects in submissions instead of dealing solely with the planning merits of the enforcement appeal.
24. In light of the unreasonable behaviour the Council sought an award of substantive costs against the Appellant.

Response by Mrs Renu Singh

25. The Council's costs application seemed to be an application of a tit for tat tactic in counter claiming. The Appellant Mrs Singh had not behaved unreasonably. She simply exercised her statutory right to appeal the decisions.
26. Permitted Development rights were relevant as the Appellant could run a business from home within the remits of Permitted Development to a higher level than the enforcement notice was allowing.
27. The Council were acting unreasonably in taking exception to the fact that it had to deal with this rather than just the planning merits of the case which had been advanced under Ground (a).

Inspector's conclusions

28. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process.
29. I find no merit in this application. Having received an appeal against their refusal to grant planning permission for the beauty salon use of a room in No. 125 Park Road, the Council would have expected to respond to counter the Appellant's points of dispute. The Appellant's appeal was valid and apt. Nothing within it suggested unreasonable behaviour in dealing with the appeal process. That included their complaint about having to deal with the ground (c) appeal against the enforcement notice. Little effort was required in rejecting that appeal. Similarly, the Appellant's misplaced permitted development point required no undue work to set aside.

30. A costs application must not be a lengthy rehearsal of the planning merits of the disputing parties' cases. An application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. That was not done. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against Mrs Renu Singh is not justified.

COSTS ORDER

31. No order as to costs is made.

John Whalley

INSPECTOR