

Costs Decision

Site visit made on 8 May 2024

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

Costs application in relation to Appeal Ref: APP/B1605/W/23/3332657 Hilltop Stores, Hilltop Road, Cheltenham, Gloucestershire, GL50 4NN

- 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 Pradeep Karadia for a partial award of costs against Cheltenham Borough Council.
 - The appeal was against the refusal of planning permission for the construction of two dwellings
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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 application essentially relies on the fact that when setting out that it has not been possible to satisfactorily conclude that the scheme would be acceptable on highway grounds, the Council's reason for refusal is neither clear or precise and consequently it is difficult for the applicant to respond as the reason is vague and uninformative. They point out that the Officer's report does not assist as all that is referred to is the civil cost of work to the highway layby which it is stated as being costly and may not be successful. They also highlight that the Officer's report acknowledges that this is not a reason to withhold consent but then proceed to do so.
4. The Council highlight that it is made clear in the decision notice that it should be read in accordance with the Officer's report and when the documents are read as a whole, sufficient reasoning and justification for the decision has been provided. They also set out that the highway concern was not listed as a separate reason for refusal but formed part of the wider design and layout reason for refusal.
5. I have examined this matter in the planning appeal decision. As set out in my decision, I consider it clear from the Officer's report that the proposed access to serve the development would result in the removal of the limited waiting bays, which in turn would require an amendment to the Traffic Regulation Order (TRO). Due to the potential conflict between the proposed access point and the existing parking bays, the highways authority indicated that if the appellant was not willing to pursue this course of action, then a complete revision of the site layout would be required.

6. I accept it does seem contradictory to state that on its own these highway concerns as set out in the Officer's report would not be a reason to withhold planning permission, only to then include it in the decision notice. I am also not persuaded that highway matters formed part of the wider design and layout reason for refusal rather than being a separate issue.
7. However, overall, I consider that whether or not the applicant provided sufficient information for the Council to conclude that the scheme would be acceptable on highway grounds at the time the Council made its decision was a matter of planning judgement and the Officer's report makes a sufficient case to support this view. This judgement is supported by specific reference to a policy of the development plan. While I have come to a different judgement on the planning merits, I consider that the approach of the Council was arguable. Therefore, including this matter as a separate issue in the decision notice does not constitute unreasonable behaviour.
8. As I have also outlined in my planning appeal decision, in their appeal submissions the applicant has not addressed the highway matter raised by the Council in any great detail. The scheme was also refused based on the effect of the proposal on the character and appearance of the area and its effect on the living conditions of the occupants of a neighbouring property. Whether or not the proposal resulted in harm in relation to these matters is also a matter of planning judgement. The Council made a satisfactory and proportionate case in these respects.
9. Therefore, an appeal could not have been avoided. Given that the applicant has not addressed the highway matter raised by the Council in any great detail, even if I had found that the Council had acted unreasonably, I am not persuaded that there has been any significant wasted expense in any event.
10. In my judgement, when considered in the round, the Council's case was sufficient to raise concerns about the highway implications of the proposal and argue that without further information planning harm, contrary to the development plan could result. Overall, I do not consider that the Council has acted in such a way that it should be considered to be unreasonable behaviour that has led to unnecessary or wasted expense in the appeal process to justify an award of costs.

Conclusion

11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and an award of costs is not warranted.

S Rawle

INSPECTOR