



Costs Decision

Site visit made on 21 May 2024

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 11th June 2024

Costs application in relation to Appeal Ref: APP/Y2430/W/23/3333961 1A Bradgate Lane, Asfordby, LE14 3SA

- 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 Central England Cooperative Ltd for a full award of costs against Melton Borough Council.
- The appeal was against the refusal of planning permission for the demolition of existing single storey side extension and single storey rear extensions, erection of single storey rear extension and change of use from public house (sui generis) to convenience store (class E(a)). Change of use of existing Co-operative Food store to community cafe (Class E(b)) with associated access, parking and landscaping.

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and where this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The general principle embodied within the PPG is that the parties involved should normally meet their own expenses. Examples of unreasonable behaviour by planning authorities include:
 - the use of vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, and
 - These include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen, and
 - prolonging the proceedings by introducing a new reason for refusal.
3. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. The Applicant's claim is made on substantive grounds and alleges that the Council introduced additional aspects to its case at the appeal stage, namely those argument pertaining to viability. According to the Applicant this was despite the Decision Notice and the Committee Report confirming that viability did not form part of the Council's reason for refusal. The inclusion of viability within the Council's Statement of Case is also said to contradict the advice that the Council's Solicitor gave to the Planning Committee where Members were explicitly told to not pursue these matters.

5. The Council responded in detail to the costs application and argued that no new refusal reason has been introduced and any suggestion to the contrary is flawed and represents a misunderstanding of the Council's case on the part of the Appellant. Moreover, where the Council's Statement of Case refers to the issue of viability, this is in the context of the Applicant's failure to demonstrate that the public house was no longer viable in terms of the role and function it performed within the local community.
6. The Council's Statement of Case only mentions the word *viability* twice (paragraphs 5.14 and 5.15). The first reference in 5.14 highlights that no supporting viability information was provided as part of the application. While that could be seen as a factual statement, the final sentence of the same paragraph goes on to allege non-compliance with the Local Plan. That very clearly was an advancement of the reason for refusal and went beyond the legal advice given to Members. The reference to viability in paragraph 5.15 is more in the context of the approach to decision making under Policy C7 and does not take the arguments in 5.14 any further.
7. I therefore find that although viability matters did not represent a key part of the Council's case there was an element of unreasonable behaviour in that additional arguments were introduced at the appeal stage. However, I am not persuaded this resulted in extra expense or preparatory work for the Applicant or that it delayed the proceedings. In reality, the Applicant's response to paragraph 5.14 was relatively straightforward (see Final Comments paragraphs 6-8) and did not involve extra assessment, or indeed anything beyond a short rebuttal in the aforementioned paragraphs. In effect the Applicant quickly and easily rebutted the Council's position without wasting expenditure.
8. As a result, I find that unreasonable behaviour resulting in unnecessary or wasted, as described in the PPG, has not been demonstrated.

D M Young

INSPECTOR