



Costs Decision

Site visit made on 16 July 2024

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2024

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3335592 Mount Pleasant Yard, White Street, Market Lavington, Devizes SN10 4DR

- 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 I Brown on behalf of Prestage Developments Ltd for a full award of costs against Wiltshire Council.
- The appeal was against the refusal of planning permission for the redevelopment of site including demolition of an existing building and erection of 4 no. live/work units (Sui-Generis) and 1 no. bed and breakfast (Use Class C1) with Access and Layout to be determined and all other matters reserved.

Decision

1. The application for an award of costs is partially allowed.

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 seeks a full award of costs on the grounds that the Council behaved unreasonably by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, refusing planning permission on a planning ground capable of being dealt with by conditions, and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant contends that in refusing permission the Council incorrectly asserted that demand for the tourist accommodation was required to be proven and the proposal would give rise to a loss of employment land on the basis that it failed to consider live-work units as an alternative employment use of the site. They further argue that planning conditions could have been imposed to secure the use of the live-work units, as well as the provision of refuse storage. The applicant also claims that the Council failed to objectively assess the highway safety implications in light of the advice from the Highway Authority (HA).
5. The Market Lavington Neighbourhood Development Plan 2018 – 2026 clearly sets out the objective to balance residential development with uses such as small-scale tourism including bed and breakfast accommodation. Moreover, the National Planning Policy Framework identifies a need to accommodate new and flexible working practices (such as live-work accommodation). Neither of which

require evidence of demand, or that such uses would be viable. In addition, there is no clear reason why the occupation of the live-work units, including the provision of workspace, could not be secured through suitable planning conditions, to ensure the ongoing employment use of the site.

6. Vehicle tracking for a refuse vehicle is shown on the Access Swept Path Analysis Drawing¹ submitted with the planning application, and given the site layout, there is no compelling reason why the provision of refuse facilities to serve the individual units was not capable of being dealt with by a condition.
7. The decision by the Council is one which is a matter of judgement and in this case, it was entitled not to accept the professional advice of the HA so long as a case could be made for the contrary view. However, the Council has shown no detailed justification for the stance it took, particularly in relation to the likely increase in traffic generation, which was based on vague generalisations regarding vehicle trips associated with the proposal. Furthermore, despite the appropriate visibility splays being shown, as confirmed by the HA, the Council nevertheless determined the visibility at the junction was insufficient. I therefore consider that the Council's refusal reason relating to highway safety was not well founded.
8. Regarding pressure for the future removal of trees and the subsequent effects of this, it will be seen from my decision that I agree with the Council and that there were sufficient grounds for refusing planning permission, which could not be overcome with the use of conditions. It follows that I am satisfied that the Council has shown that it was able to substantiate this reason for refusal and on that basis has not acted unreasonably. As such, the appeal, and any additional expense incurred in that regard, could not have been avoided.
9. Moreover, the Council's fourth refusal reason was not unreasonable given that it made its decision based on the information before it at the time, which did not include the additional information² submitted by the applicant in support of the appeal.

Conclusion

10. I have found in favour of the applicant with regards to refusal reasons 1, 2 and 5, and that the Council did not present a suitably substantiated case in support of why they felt that the proposal was unacceptable in these regards. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense in contesting the appeal in relation to these matters, has been demonstrated and that a partial award of costs, relating to these aspects only, is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wiltshire Council shall pay to Mr I Brown on behalf of Prestage Developments Ltd, the partial costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

¹ Transport Statement by Rappor dated November 2022

² Bat Tree Addendum Report by Gordano ecology dated December 2023 Version 1.0

12. The applicant is now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

E Worley

INSPECTOR