



Costs Decision

Site visit made on 23 October 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2024

**Costs application in relation to Appeal Ref: APP/T3725/W/24/3342013
Myton House, 40 Holly Walk, Leamington Spa, Warwickshire CV32 4HY**

- 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 and Mrs Garstang for a full award of costs against Warwick District Council.
- The appeal was against the refusal of planning permission for the change of use from office (Use Class E) to single dwelling (Use Class C3).

Decision

1. The application for an award of costs is allowed in the terms set out below.

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 applicants submit that the Council has acted unreasonably because it sought to rely on a policy that it had previously considered to be outdated and superseded by national policy. It is contended that its approach to the appeal scheme was inconsistent with an earlier similar proposal, and there have been no material changes to justify a change in approach. The difference relied upon by the Council relates to legal advice, the contents of which ought not to have affected the overall planning judgement made.
4. PPG further indicates that local planning authorities will be at risk of a substantive award being made against them for not determining similar cases in a consistent manner.
5. The evidence provided refers to an earlier relatively recent planning approval reference W/21/0743. There are similarities between that development and the appeal proposal in that it related to a listed building within the same Town Centre Employment Area. It concerned a change of use from an office building into residential use. In common with the appeal proposal, the consideration of the protection of existing employment land and buildings was central to the acceptability or otherwise of the principle of the change of use. Both decisions were taken following relevant changes to the Town and Country Planning (Use Classes) Order 1987 (the Order) and changes to permitted development rights.
6. The delegated decision worksheet for W/21/0743 noted changes to the Order and concluded that in relation to town centres the changes amounted to a clear

direction that a greater variety of uses were appropriate and should not be unduly restricted.

7. This stance was broadly similar to advice received from the Council's policy team in relation to the application of policy TC12 of the development plan at the appeal site. Nevertheless, the delegated decision worksheet for the appeal scheme sought to distinguish the approach taken in this case on the basis that it had received legal advice contrary to the decision taken in W/21/0743. The information before me indicates that the legal advice in question consists of a short email dated 8 March 2024. It seeks to respond to a question posed in an e-mail dated 28 February 2024 that asks, 'Can we resist the change of use to residential under TC12 or otherwise?'.
8. The legal advice confirms that policy TC12 of the development plan should apply notwithstanding changes to the Order, but references to the obsolete class B1a should be read as references to class E(g) under the Order. It does not say that planning decision W/21/0743 was wrongly made. Neither does it purport to direct what decision should be made in the case of the appeal scheme, nor what weight should be attributed to policy TC12 in the overall planning balance. Its brevity and specificity should have alerted the Council that it did not amount to a comprehensive assessment of all the relevant factors, including the existence of the preceding decision W/21/0743. Hence, whilst the legal advice was pertinent, it did not substitute the need for an overall planning balance to be made in relation to the appeal decision.
9. It will be seen from my decision that I agreed with the Council that the proposal would conflict with policy TC12. However, the Council did not go on to adequately consider what weight ought to be attributed to that conflict, nor what weight other material considerations brought to their attention might attract. These included notable changes to the national policy context, the advice from the policy team and the approach taken by the Council in relevant recent decision-making. The conclusion section contained in the delegated decision worksheet does not adequately demonstrate the exercise of judgement in these respects, which given the similarities to the circumstances of W/21/0743, was unreasonable. Hence, the legal advice before me does not provide a plausible reason of itself for taking a different approach in principle.
10. Moreover, the Council missed a further opportunity to thoroughly review the overall planning balance of the case in the run up to the appeal owing to a change in housing land supply figures.
11. Although I accept the general tenet that each case must be assessed on its own merits, it is reasonable to expect that in similar circumstances the Council will apply development plan policies that relate to the principle of development in a consistent way. Where an ostensibly different approach is taken this should be clearly explained. On the evidence before me, the Council failed to do so in this instance. I am persuaded that this equated to not determining similar cases in a consistent manner, and therefore, amounts to unreasonable behaviour within the meaning of the PPG. As this was the only area of dispute between the main parties, it follows that had they acted otherwise, the appeal and its associated expense, could have been avoided.

Conclusion

12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

13. 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 Warwick District Council shall pay to Mr and Mrs Garstang, the 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.

The applicants are now invited to submit to Warwick District 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.

Helen O'Connor

INSPECTOR