



Costs Decision

Hearing held on 17 December 2024

Site visit made on 17 December 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2025

Costs application in relation to Appeal Ref: APP/U2750/W/24/3351755

Moor and Pheasant, Dalton Moor, Thirsk, North Yorkshire, YO7 3JD

- 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 Oakland Place Limited for a full award of costs against North Yorkshire Council.
 - The appeal was against the refusal of planning permission for a development described as the change of use of a former public house (Sui generis use) to form a convenience store under Class Sch.2 Part 3 Class F2(a) and three 2-bed apartments on the ground floor and two 1-bed apartments on the first floor (with existing residential use continuing in the remaining space). The change of use gives rise to operational development in the form of additional fenestration and doors, a new accessway for and with parking for the residents, amenity space, bin storage within an existing garage, and a parking layby adjacent to the road serving the convenience store.
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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 Guidance is clear in setting out the circumstances in which a local planning authority could be vulnerable to an award of costs against it. It also goes on to advise of the circumstances in which a local planning authority's handling of the planning application prior to an appeal may lead to an award of costs.
4. The applicant's costs submission was made in writing prior to the hearing and the council responded in writing. There is therefore no need for me to rehearse details in this decision. However, in summary, his claim is based on his assertion that the unreasonable actions of the Council have resulted in the need to go to appeal because they failed to determine his application.
5. The Council accept that the delays in dealing with the application were unfortunate but have explained that the delays were in the main due to requests for further information from the applicant which were fundamental to the determination of the application, and to delays caused by slow consultee responses, in particular from Highways and Environmental Health which were outside the case officer's control.
6. Regrettably an administrative error occurred with regard to the payment of the planning application fee which in turn led to a delay in its validation. The applicant

is also frustrated by the apparent refusal of the case officer to discuss the relevant policies with the applicant face to face. The applicant has provided copies of correspondence relating to the application which demonstrates the numerous attempts made to contact the Council and to seek to resolve matters relating to the main issue of the appeal. Nevertheless, from the information before me it is apparent that a meeting would have been unlikely to have resolved the differences in opinion between the applicant and the Council particularly in relation to the first main issue.

7. However, as outlined above, the PPG states that any expenses incurred at application stage, or any indirect expenses, cannot be recovered by an award of costs in the event of an appeal, which can only award costs relating unnecessary or wasted expense occurred in submitting an appeal.
8. The PPG advises that local planning authorities, in any appeal against a failure to determine an application within the statutory period, should explain the reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. From the evidence before me, it appears that the Council were clear with the applicant during the consideration of the appeal that they considered that there was conflict with Policy IC4 of the Hambleton Local Plan (HLP).
9. The applicant also states that he was surprised that the Council considered that there was a conflict with HLP policy E2. However, consultee responses and comments made by the case officer related to the need for odour and noise surveys. Therefore, it should not have come as too much of a surprise that they considered that there was a conflict with this policy which relates to the living conditions of future and existing occupiers and is applicable to all development proposals. I see no obvious reason why this should have been not have been foreseen by the applicant, as it was apparent he was familiar with the HLP through his comments made on Policy IC4 to the case officer. Consequently, I find that unreasonable behaviour on the part of the Council has not occurred.
10. Whilst I can appreciate the frustration that delays may have caused, determining the application would not necessarily have prevented an appeal being necessary. Furthermore, I have not been presented with any compelling evidence that unreasonable behaviour of the Council has led to unnecessary or wasted expense in respect of the appeal submission.

Substantive Grounds

11. The PPG advises that local planning authorities are at risk of an award of costs by refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead. As I have detailed in the appeal decision, my view is that a suitable condition would address the Council's concerns about the potential effect of noise and disturbance and odour on the living conditions of future occupiers of the development.
12. Although I have found in favour of the appellant, on the second main issue in relation to living conditions, no technical reports were commissioned by the applicant to demonstrate their case, therefore no unnecessary costs have been incurred by the applicant in defending his position at appeal. HLP Policy E2 is clear that it applies to all development and it is reasonable to expect developers to be

- required to implement mitigation where necessary and practical in order to protect any future occupiers of a development from external factors which may affect their living conditions such as, in this case, noise and disturbance or odour.
13. The applicant argues that as the proposal only conflicts with two policies of the development plan the planning application should have been approved (notwithstanding his assertions during the appeal that these policies are not applicable to the appeal case). The National Planning Policy Framework (the Framework) is clear that decisions should be made in accordance with the development plan when read as a whole, which is a matter of judgement for the decision-maker. Furthermore, the PPG is clear that the Framework ‘must be taken into account where it is relevant to a planning application or appeal’ and therefore is implicit that national planning policy is a consideration in the determination of all planning applications and appeals. Therefore, although good practice it is not necessary for the Council to rehearse a planning balance in every instance, especially where clear conflict with the development plan exists and no material considerations have been put forward to outweigh any harm.
14. My decision on the planning appeal sets out my reasoning as to why I agree with the overall conclusion reached by the Council. I have agreed with the Council that no material considerations exist that would mean that planning permission should be forthcoming in conflict with Policy IC4 of the development plan, although I have found that the imposition of suitably worded conditions could overcome conflicts with Policy E2. I have not had my attention drawn to any other policies in the plan which should take primacy over Policy IC4 which would lead me to an alternative conclusion. I therefore find that the Council did not act unreasonably in asserting in their putative reasons for refusal that conflict with Policy IC4 would have led to refusal of the planning application as they determined it. It is my view, therefore, that the appeal could not have been avoided. There was not, as a consequence, unnecessary or wasted expense as the Council’s case was well-founded and justified.
15. Therefore, having carefully considered the various elements of the applicant’s claim for an award of costs I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

K L Robbie

INSPECTOR