



Costs Decision

Hearing held on 23 January 2014

Site visit made on 7 February 2014

by I Radcliffe BSc(Hons) MCIEH DMS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 April 2014

Costs application in relation to Appeal Ref: APP/L3245/A/13/2204719

Land off Mill Street, Wem, Shropshire SY4 5EX

- 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 The Millhouse Group for a full award of costs against Shropshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for Wem Gateway – erection of three storey terraced block comprising 9 town houses and 13 apartments with associated external works including formation of vehicular access, estate road and car parking.
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Decision

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

The submissions for The Millhouse Group

2. The Council have failed to provide sufficient evidence to demonstrate that the proposed development would have a significant adverse effect on Shropshire's Environmental Network. This is contrary to paragraph B16 of Circular 03/2009. The appeal scheme is a resubmission of an almost identical scheme which was not refused on the basis of harm to the character and appearance of the area. In not determining like cases in a like manner paragraph B29 of the Circular has been contravened.
3. No reply to the Council's written response was received.

The response by Shropshire Council

4. The response to the application was made in writing.

Reasons

5. Since the application for costs was made Circular 03/2009 has been superseded by Planning Practice Guidance (PPG). However, having regard to the submissions received, I am satisfied that no party's interests would be prejudiced by judging the application against PPG.
6. PPG advises that, irrespective of the outcome of the appeal, costs may only 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.
7. There are 2 claims to be assessed. Firstly, whether the Council produced evidence to show clearly why the development cannot be permitted (paragraph

- 49). Secondly, whether the Council determined the proposed development and the previous scheme in a like manner (paragraph 49).
8. In relation to the first claim, at appeal stage the Council's Statement of Case expanded upon the second reason for refusal explaining why, in the view of the Council, the County's environmental assets would be adversely affected to a significant degree. Taken together with the discussion at the hearing, realistic and specific evidence was therefore presented by the Council about the consequences of the proposed development. The Council's behaviour therefore was not unreasonable.
 9. Turning to the second claim, it is clear from the minutes of the Committee Meeting that refused the initial application (ref 10/04297/FUL) that although it was not given as a reason for refusal there were concerns over the design of the development and loss of the site to built development. At the first of the two committee meetings considering the appeal proposal in 2013 the minutes showed once more that members had concerns regarding overdevelopment of the site and the impact of the development on the character and appearance of the area. This was confirmed in the decision notice where this was given as the first reason for refusal. The Statement of Case, the discussion at the hearing and the site visit substantiated this reason. It was not therefore spurious. Not citing this as a reason for refusal in relation to the first application was therefore unfortunate rather than unreasonable behaviour.
 10. Furthermore, unnecessary expense was not incurred. This is because the Council's second reason for refusal on the protection of environmental assets meant that if the appellant wished to pursue the proposed development they would have had to go to appeal anyway. In addition, had the first application been refused on the basis of its harm on the character and appearance of the area, given the fundamental disagreement between the parties regarding the scale of the development, it is unlikely this could have been resolved other than by appeal.
 11. Accordingly, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in PPG, has not been demonstrated. An award of costs is therefore not justified.

Ian Radcliffe

Inspector