



Costs Decision

Site visit made on 15 July 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Costs application in relation to Appeal B Ref: APP/L3245/W/24/3343900 Wheatland Services, Bridgnorth Road, MUCH WENLOCK, TF13 6AG

- 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 John Corbo for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for the partial demolition of the existing retail convenience store and construction of extensions, revision to car parking facilities, provision of four electric vehicle charging points, installation of solar panels on extension roof and change of use of the ground floor of 17 St Marys Road to a coffee shop.
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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. A Council may be vulnerable to costs if it has unreasonably refused a planning application or not determined a similar case in a consistent manner.
3. The costs application essentially alleges that the Council acted unreasonably by not properly considering the new information submitted for the second scheme which had been submitted to address the Council's concerns with the first scheme including a new Transport Statement. The claim asserts that the Council failed to provide comments from the Highway Authority and therefore failed to fully consider the revised scheme. It is also suggested that the Council behaved unreasonably by adding a third reason for refusal, that was not part of the refusal of the first scheme. It is further claimed that the Council has since agreed that the principle is acceptable, and as the additional technical details provided demonstrate that the scheme is acceptable, the decision to refuse was unreasonable.

Background

4. The costs application relates to the second version of a proposal that was first submitted under reference 23/01805/FUL (Appeal A). The first version was subject to four reasons for refusal (RfR), resulting in Appeal A. The second version (23/05505/FUL) was refused for three reasons, resulting in Appeal B, two reasons of which were similar to the first refused decision.

Assessment of the second scheme

5. The Council has explained that the proposal was determined by delegated authority without the benefit of an officer report. The appellant makes no suggestion that the Council was in breach of its delegated powers, and I see no reason to question this here. There is no statutory requirement to produce an officer report, although it is good practice for one to be produced for each decision for transparency and probity reasons.
6. The Council has explained that the second submission was subject to internal consultation evidenced by the Council removing its concerns as to the effect on the conservation area. Furthermore, the Council have confirmed that the SLR Transport Statement and Noise Assessments were reviewed by the Highway Authority and Regulatory Services, respectively and informed its decision.
7. Accordingly, I see no evidence that the new details, submitted in support of the second scheme was not considered by suitable consultees. Furthermore, I have found in my main decision that some of the Council's concerns with respect to highway impacts were reasonable and warranted the refusal of the second scheme. Consequently, the behaviour of the Council with respect to this matter is not regarded as unreasonable.

The additional reason for refusal

8. The Council included a new RfR in connection with the second scheme. This related to a number of inconsistencies and omissions from the plans that caused the Council to be uncertain as to the effects of the proposal.
9. In my main discussion I accepted the amended plans, showing the delivery area and car parking functioning without conflict. Also, in my preliminary matters I explored the details submitted for each component of the proposal. I found that details were missing, with respect to the changes to 17 St Mary's Road, with respect to a rear elevation plan. However, I also found that the submitted plans were of sufficient clarity to understand that the garage was proposed for demolition and the rear extension was being retained. The appellant also confirmed that access to the first-floor would be achieved by a loft ladder, explaining how this upper space could be used for storage without retaining the stairs.
10. Furthermore, whilst a plan showing the internal layout of the neighbouring dwelling would have been useful, I was able to visit the neighbouring property to understand the internal layout to come to a view on this matter. Hence plans of the neighbour were not required.
11. With respect to the retail unit, the Council raised concerns with respect to the absence of stairwells. Clearer details, in the submission, would have been useful. However, the submitted plans were of sufficient clarity to understand what was proposed and were adequate, especially as the areas of uncertainty were within a part of the retail building proposed to be retained.
12. The Council's question with respect to the solar panels was that it was unclear whether the panels would be on a building or a free-standing array. Assessment of the plans demonstrate that little space would exist for a free-standing array. Moreover, the description of development explains that it would be located on the roof of the proposed extension to the retail store. The

location of the proposed was therefore clearly stated in the submission. The final specification for the solar panels could have been agreed by of condition.

13. In summary, the additional RfR mostly raised issues with plans that were either not required, could be resolved by condition, or were a result of the Council not fully understanding the nature of the proposal. Nonetheless, it is also recognised that amended plans were submitted, and accepted at the appeal stage, that addressed one of the issues raised by the Council.
14. It is poor practice for a Council to add new reasons for refusal to a similar scheme that has already been considered and refused by a Council in the recent past. Such practice erodes public confidence in the planning process and acts contrary to the Framework's requirement for decision makers to act proactively with applicants to secure development that would improve the economic, social and environmental conditions of an area. Nonetheless, the Framework also places great importance in pre-application engagement to enable Planning authorities to front load the decision-making process and avoid unnecessary delay. The Council asserts that no pre-application discussion took place; a point agreed by the applicant, but it the Appellant stated that the first refusal provided adequate guidance for the submission of the second scheme.
15. The submitted plans were opaque in places, requiring the Council to spend time and energy working through details that could have been clearer. Also, the Council states that it made efforts to arrange a site meeting to address these matters, but this was declined. Furthermore, this RfR was not without merit, confirmed by the Appellant providing amended plans. I have found that the additional RfR has been largely justified by the Council, it is possible that this should have been included in the first refusal and this may be where the error ultimately lies.
16. In any event, even if the imposition of the additional reason was unjustified and amounted to unreasonable behaviour, this alone would have generated limited additional, and therefore wasted, expense to the applicant.

The principle of development

17. The Appellant has included an email received from the Council after the second scheme was refused. This explained that the Council encourages pre-application discussion to assist finding a positive outcome. It also states that there is no objection in principle to the scheme. This final point suggests that subject to the required justification to demonstrate it is suitable, from highway and noise impact perspectives, the scheme could be acceptable.
18. This does not seem an unreasonable or contradictory statement but provides some constructive feedback post decision.

Conclusion

19. Therefore, I have found that the Council has not acted unreasonably. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Ben Plenty

INSPECTOR