



Costs Decision

Site visit made on 28 August 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2024

Costs application in relation to Appeal Ref: APP/L3245/W/23/3330534

- 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 Jake Malcolm for a full award of costs against Shropshire Council.
- The appeal was against the refusal of planning permission for a proposed access to the site.

Previously The Rock House, 4 Granary Steps, Bridgnorth, Shropshire, WV16 4BL

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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications.
4. The main thrust of the applicant's case is that the Council was unreasonable in refusing the application, which has prevented and delayed development which should clearly be permitted having regard to its accordance with the development plan, national policy and all material considerations.
5. The applicant suggests that the Council acted unreasonably in deciding to make the application 20/02274/FUL "not proceeded with". However, the appeal before me was submitted in respect of application 23/00609/FUL, not 20/002274, which was not appealed. An award of costs can only be made in respect of costs incurred in the appeal process.
6. The applicant has raised concern that the Council did not seek the opinion of an outside consultant on the issue of stability, and that the Council is still arguing that the appeal should be dismissed on this basis.
7. The PPG advises that failure to deal with the effects of land stability could cause harm to human health, local property and associated infrastructure and that **applicants** (my emphasis) should ensure that any necessary

- investigations are undertaken to ascertain that their sites are and will remain stable or can be made so as part of the development of the site.
8. Previous issues with the land have resulted in the closure of Friar Street, as well as rock fall. I therefore consider the Council's concerns are justified, given the previous collapse of part of the site. Although the assessments provided all consider the likely stability of the sandstone itself, consideration of caves and/or cavities within the site is limited and the reports all make recommendations, which could affect the final appearance of the access road.
 9. As set out within my decision letter, whilst I don't doubt that an engineering solution could be found to enable the proposed access to be constructed, given its location within a conservation area and the proximity of the site to the highway and adjacent properties, I consider the Council was not unreasonable in requesting such information. Moreover, I have found that it would not be appropriate to address any issues of stability by condition and that the appeal, in this regard, should fail. It therefore follows that I do not consider the Council was unreasonable in refusing the application in this regard.
 10. With regard to highways, the applicant suggests that it is unreasonable that the Council's highways department request for further information took four months and was provided 8 days before the date of the decision notice, denying the applicant the opportunity to provide the information said to be missing on visibility splays. The applicant has provided me with comments provided on behalf of the highway authority in respect of application 15-05277-FUL, which stated 'no objection' subject to the inclusion of conditions. However, this is in relation to a different scheme, and the Council is not bound by the recommendation then made.
 11. The information provided through the appeal was, in my view, necessary to demonstrate that a satisfactory access with sufficient visibility could be achieved. While I have found there would be no harm to highway safety, I consider the Council was not unreasonable for refusing the application on the basis of the information submitted at the time of its determination. I note the applicant has submitted a draft legal agreement through the appeal. The Council advise that it did not request the submission of a section 106 agreement and so I do not consider the Council was unreasonable on this basis.
 12. With respect to the Conservation Area, the Council has set out its position clearly within its decision notice and officer report and has provided further explanation through the appeal. Contrary to the applicant's suggestion, I do not believe the Council has refused the application simply because historically there was no access. Its comment in this regard appears to be questioning the justification for providing a new access. Significantly, as can be seen from my decision letter, I have found that the proposed access would harm the character and appearance of the Conservation Area. As such, I do not consider the Council was unreasonable for refusing the application on this basis.
 13. With respect to the effect of parking on living conditions, the Council suggests that the Numbers 8-10 Southwell Riverside do not have off street parking, due to remains of the former Franciscan Priory. However, the applicant has drawn my attention to off-street parking which they say is available for the occupants of these properties and a representation from the occupant of No 10 clearly states they do have off road parking.

14. While it seems the Council is therefore incorrect in this regard, a number of interested parties have raised concern regarding the loss of the parking spaces. There are a number of other properties in the area which do not have access to off-road parking and, as I saw during my visit, on-street parking is well used. Although I have found there would be no significant harm in this regard, this was based upon a matter of judgement. The Council has exercised its own planning judgement in this regard and so I do not consider the Council was unreasonable in identifying it as a reason for refusal.
15. With respect to living conditions of occupants of Nos 8-10 Southwell Riverside, given the proximity of the site to the rear of these properties, despite the presence of a boundary wall, light from vehicles is likely to be perceptible to occupants of those properties. While I have found that vehicles exiting the access at night would not significantly harm the living conditions of occupants of Nos 8-10 Southwell Riverside, this is also a judgement I have made based upon the evidence before me and my inspection of the site. The Council has exercised its own planning judgement in this regard, and so I do not consider it was unreasonable for refusing the application on this basis.
16. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M Savage

INSPECTOR