
Costs Decision

Hearing held on 9 September 2014

Site visit made on 9 September 2014

by Mark Dakeyne DipTP MRTPI

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

Decision date: 25 September 2014

Costs application in relation to Appeal Ref: APP/L3245/A/14/2213935 Land at Hereford Road, Shrewsbury SY3 7RE

- 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 Morbaine Limited for a full award of costs against Shropshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a Class A1 foodstore with associated parking and servicing facilities and a Class B2 workshop with associated parking facilities.
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Decision

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

The submissions for Morbaine Limited

2. The costs application was submitted in writing in advance of the hearing. The following additional points were made orally at the hearing.
3. There were concerns from local residents and Councillors. But there was a lack of the required evidence in relation to the concerns. Substantial evidence was required for those concerns to carry weight. The Council was open and honest in relation to its position but, ultimately no statement or professional and technical evidence was provided to counter the reports commissioned from, and supported by, professionals, including Officers of the Council.
4. The appellant did not want to be at the hearing having worked tirelessly over 12 months to resolve issues such as highways. But ultimately there was no choice but to go to appeal. The written representations route was pursued to try to reduce costs for the main parties but the hearing procedure was imposed and it was necessary to attend and incur the costs as a result.

The response by Shropshire Council

5. The response was made orally at the hearing.
6. The duty to support reasons for refusal with technical and specialist evidence was accepted. During the application determination process legal advice was sought which indicated that it would be difficult to defend the highways reason for refusal. In order to have a chance of defending successfully the retail related objection it would be necessary to seek specialist advice.

7. The Council took a decision not to seek specialist advice through the use of consultants. It also agreed to the written representations procedure to reduce costs for all parties. The hearing route was not one that was the choice of the Council.
8. However, it is clear that Councillors and members of the public have strong opinions and feelings about the development based on their knowledge and experience of the site and the area. Evidence can be produced by consultants but often this purely serves to support the position of those who are paying for the advice. For example the MOVA systems installed elsewhere were supported by experts but have made precious little difference. In considering the appeal and costs decisions these factors need to be taken into account.

Reasons

9. The Government's Planning Practice Guidance advises that, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
10. The Council did not produce a statement for the appeal but relied on verbal representations at the hearing. The Council referred to development plan policies and the National Planning Policy Framework in its reasons for refusal but did not provide reasoning at the hearing to demonstrate how the proposal would be in conflict with those policies. The proposal was clearly one that should have been permitted, having regard to its accordance with the development plan, national policy and other material considerations.
11. In advance of the hearing the Council advised that it would not be offering any technical or professional evidence to support the reasons for refusal. This position was confirmed at the hearing. Whilst the Councillors who attended the hearing used their knowledge and experience of the area to raise concerns this did not amount to evidence sufficient to substantiate the reasons for refusal in the face of the technical evidence provided by the appellant which was supported by the Council's Officers. The assertions made, for example those relating to the MOVA system, were generalised and not supported by objective analysis.
12. Representations were made on behalf of Mid Counties Cooperative Society (Coop) in writing and at the hearing in relation to the retail issue. There were a significant number of representations made by local residents in advance of the hearing and a number spoke at the event. Whilst I took into account these representations in my decision they were not provided by the Council and, in any event, did not amount to evidence sufficient to substantiate the reasons for refusal, including that related to retail matters.
13. For the reasons given above, I conclude that unreasonable behaviour has directly caused the appellant to incur unnecessary expense. A full award of costs is justified.

Costs Order

14. 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

Shropshire Council shall pay to Morbaine Limited, the costs of the appeal proceedings described in the heading of this decision.

15. The applicant is now invited to submit to Shropshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Mark Dakeyne

INSPECTOR