



Costs Decision

by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 10/05/2023

Costs application in relation to Appeal Ref: CAS-02247-Q6X9P5

Site address: 287 Caerleon Road, Newport NP19 7HB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
 - The application is made by Mr Simon Bell for a full award of costs against Newport City Council.
 - The appeal was against the refusal of planning permission for the change of use from 2 flats to 4 apartments and associated works.
 - A site visit was made by the Inspector on 18 April 2023.
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Decision

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

The submissions for Mr Simon Bell

2. The costs application was submitted in writing and states that a full award of costs is justified since the Council in refusing permission has behaved unreasonably and that the unreasonable behaviour has led to the appellant incurring the unnecessary or wasted expense of an appeal.
3. The committee report and recommendation is clear and unambiguous and the Council had no reasonable planning grounds to refuse planning permission. Overall, the Council has failed to substantiate its case with any compelling evidence to justify refusing the application, which clearly complies with the development plan. The Council has ignored the professional advice of its senior officers and made vague, generalised and inaccurate assertions about the impact, unsupported by any objective analysis. The Council has clearly acted unreasonably in respect of the substance of the matter, which is supported by the examples described in paragraph 3.11 of the Annex.
4. The appellant has had to seek professional advice to lodge the appeal. The unreasonable behaviour by the Council has therefore led to the appellant incurring unnecessary costs.

The response by Newport City Council.

5. The Council states that in reaching their decision the Planning Committee took into account all relevant material planning considerations, including the professional advice from Planning Officers. A member of the Planning Committee also has local knowledge

of the surrounding area as a place of work and previous home. Members of the committee attached significant weight to local knowledge around on-street parking availability, the narrowness and use of the rear lane and the character of the area. They were also aware of the parking survey evidence provided in a previous decision at the appeal site, which is material to understanding the on street parking availability in the area.

Reasons

6. The Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex') advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process. In terms of the advice as contained within the Annex, unreasonable behaviour can be procedural i.e. relating to the process, or substantive i.e. relating to issues of substance arising from the merits of an appeal or application; the Annex cites examples of such behaviour.
7. The Annex advises that authorities are not bound to adopt the professional or technical advice given by their own officers, but they are expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and that they have relevant evidence to support their decision. The Council's planning committee report is very detailed and lists the concerns of local residents and provides an in-depth assessment of the issues raised by interested parties and those objecting to the development. The Council has also provided evidence to support its reasons for refusal, which were based on reasonable planning grounds. In particular, by reference to the Development Plan and other material considerations, the Council has adequately demonstrated how it considers that the grant of planning permission would result in harm.
8. In the planning balance I have concluded that, taking account of the relevant policies of the Development Plan, the submitted evidence and other material considerations, including my site observations, the proposed development would not give rise to any harm to highway safety or the living conditions of neighbouring residents or the future occupiers of the apartments. Nonetheless, although the Committee's decision was taken contrary to professional and technical advice, its reasons for doing so were based on reasonable planning grounds. Whilst I disagree with the Council's views in relation to the main issues, it was not unreasonable for Council Members to take a view contrary to the advice of officers.
9. I am broadly satisfied that the basis for the Council's assessment and deliberations on the planning application were reasonable in the context of the Development Plan and not wholly based on the objections raised by local residents, and the influence this may have had on Councillors who refused the application against the recommendation of officers. During the appeal process the Council has considered the effects of the proposal and that its reasons for refusal were based on reasonable planning grounds. Therefore, on balance, the Council's submission was not so lacking in detail or merit to amount to unreasonable behaviour.
10. As such, the matter is one of disagreement between the parties and I do not find that the appellant has incurred unnecessary or wasted expense in preparing a case for the appeal.

Conclusions

11. Having regard to the reasons for refusal put forward by the Council in its decision notice and all other relevant considerations and the provisions of the Well Being and Future Generations Act, I conclude that the Council's decision to refuse permission did not amount to unreasonable behaviour. The application for an award of costs against the Council therefore does not succeed.

R Duggan

INSPECTOR