



Costs Decision

Inquiry held on 8 January 2009

Site visit made on 8 January 2009

by **David Murray BA (Hons) DMS MRTPI**

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

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Decision date:
18 February 2009

Costs application in relation to Appeal Ref: **APP/R1845/A/08/2081390** **17 Bridge Street, Stourport, DY13 8UT.**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Rendezvous Amusements for a full award of costs against Wyre Forest District Council.
- The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for the change of use of café to amusement centre and installation of a new shopfront.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for the appellants

1. The appellants seek a full award of costs in relation to the refusal of planning permission in the first place and secondly in respect of the Councils' failure to provide evidence in support of the reason for refusal. Both of these elements amount to unreasonable behaviour in the context of paragraphs 7 and 8 of Annex 3 to Circular 8/93.
 2. In respect of the first ground, the Council did not look at the planning application on its individual merits. As a *sui generis* use was involved, the Council simply said that was contrary to policy, and did not look at the issue flexibly. The Council placed undue weight on Local Plan policy TS.2 which was recognised to be, at best, poorly drafted, and could be construed as a nonsense. Further this policy consideration was compounded by the lack of reference to Local Plan policy TS.3, which deals specifically with commercial leisure facilities, and says that in Stourport, such proposals will be considered on their own merits having regard to the other policies in the plan. Further, the Council failed to consider the proposal in relation to the stated objectives behind the Local Plan policies or where it met other policies. For example in improving the appearance of the building in the Conservation Area. The Council did not look at the application in the light of all material considerations and a reasonable authority would have concluded on the individual merits of the case that planning permission should have been granted. The appellants' need to resort to the appeal process was therefore unnecessary and they incurred the costs of the appeal.
 3. In terms of the second ground, at the Inquiry the Council did not provide adequate evidence to substantiate the reason for refusal. The Council relied on the opinion of Mrs Mellor though she did not refute much of the appellants' case but agreed that the proposal would not have a harmful impact and was not unacceptable in the Conservation Area. Further, Mrs Mellor placed weight
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on the explanatory text that went with Policy FS.2 but that introduced new factors, not included in the policy, and which should have been given even less weight.

4. Overall, the appellants' submission meets the conditions set out in paragraph 6 of Annex 1 of the Circular for an award of costs to be made.

The Response by the Council

5. The case involved an interpretation of policy. It is clear from the officers' delegated report that a multitude of policies were applicable and that the Council officers made a professional judgement in considering the determining issues and which policy factor prevailed. Even though the decision was to refuse, the Council still considered the implementation of policy TC.2 in a flexible manner. The nature and terms of the policy, and its flexible application, had been supported by the Inspector who prepared the report following the Local Plan Inquiry. The Council also took into consideration that TC.2 should be read in conjunction with the advice in Planning Policy Statement 6 - Planning for Town Centres.
6. In this case, the decision makers are dealing with matters of planning judgement. Mr Etchells conceded that two professional people could come up with two different conclusions and still both be acting reasonably. The Council did provide adequate evidence of the alleged conflict with policy and the harm to viability in terms of the fragmentation of the commercial frontage and the lack of diversity in uses that the proposal would contribute to. The Council referred to recent policy documents that considered the nature of desirable uses in the vicinity of the site. Also, while vacancy rates have fluctuated recently, at the time of the planning decision, Stourport did not have above average property vacancy rates to suggest that filling the vacant commercial unit should be given a higher priority at that time.
7. Overall, the Council submits that it has not acted unreasonably in refusing planning permission for the ground stated and was able to substantiate this ground at the Inquiry. The fact that it has a divergence of opinion with the appellants does not amount to unreasonable behaviour and the cost application should not be granted.

Conclusions

8. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
9. As a separate matter I have allowed the planning appeal, as I considered that, the proposal was in accordance with the balance of policies and the underlying objectives and the replacement of a class A.3 use with a *sui generis* use would not harm the vitality of the town centre. However, this was a planning judgement and I can not fault the Council for reaching a different conclusion on the range of issues involved. The delegated report sets out the policies and main considerations involved and the fact that policy TC3 was not referred to, I

do not regard as a material shortfall, as, in itself, the policy adds little to the assessment. It is a statement of the obvious.

10. The Council interpreted and acted on a key planning policy (TC.2) the wording of which had been through the scrutiny of the Local Plan Inspector. Further, in implementing this policy the Council were entitled to act on the presumption that non-retail uses would not normally be allowed on ground floor street frontages and take into consideration the effect of fragmentation as set in paragraph 14.8 of the explanatory text. This text also appears to have been considered unambiguous by the Local Plan Inspector. It was therefore not unreasonable for the Council to have placed some weight on it.
11. Although the evidence from Mrs Mellor for the Council was considerably shorter than that presented by Mr Etchells on behalf of the appellants, I am satisfied that it contained sufficient information and professional opinion to justify the Council's case, even though I did not share the Council's conclusions on the planning merits of the case.

Formal Decision

12. I refuse the application for costs.

David Murray

INSPECTOR