



Costs Decisions

by Melissa Hall BA(Hons), BTP, MSc, MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 29/11/2023

Costs applications in relation to Appeal Refs: CAS-02278-X7K9S1 & CAS-02495-H0J6W9

Site address: Land at Silver Circle Distillery, Pleasant View Barn, Ninewells Road, Catbrook, Trellech, Monmouthshire NP16 6UL

Decisions

1. The applications for awards of costs are refused.

Procedural Matters

2. Two awards of costs are sought by the applicants; the first is in relation to the s78 appeal and the second in relation to the Enforcement Notice appeal. The applications will be considered on their individual merits. Nevertheless, to avoid duplication I have dealt with the two together, except where otherwise indicated.

Reasons

3. 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 (my emphasis).
4. I appreciate the frustrations regarding delays during the processing of the application, the difficulty experienced engaging with the Council and the perceived lack of transparency. However, none of these matters specifically resulted in the appeals coming into being or the applicant incurring any additional expense in submitting the appeals than he would otherwise have done.
5. Whilst it is claimed that the Council failed to demonstrate how it considered the evidence submitted by the applicant, I am satisfied that, overall, it met its obligations to give proper consideration to the planning application, having regard to the development plan, national planning policy and other material considerations. That is, the Council was perfectly entitled to take a different view in terms of the weight to be given to the matters before it in determining the application. That the Council did not give the applicant an opportunity to respond to the fundamental highway safety concern is not a failing in my view if it considered that such concerns could not be overcome and thus provided little justification for further delaying the determination of the application.
6. I do not doubt that the protracted planning and enforcement issues have resulted in fewer customers, cancelled bookings and loss of income. Nevertheless, the costs regime is not intended to compensate for such matters which, in any event, have only come about as a result of unauthorised activity on the site. Rather, it is to deal with unreasonable

behaviour resulting in unnecessary or wasted expense in the appeal process, which is not the case here.

7. I also understand that work was undertaken in relation to the first Notice served, only for it to be withdrawn and a second Notice served. I accept that the Council withdrew the first Notice on PEDW's advice regarding its incorrect drafting. However, it seems to me that any work undertaken in respect of the first Notice would not have been abortive given that the second Notice related to the same development.
8. For the reasons given, I do not find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Section 12 Annex, has been demonstrated.

Melissa Hall

INSPECTOR