
Costs Decision

Site visit made on 25 July 2016

by Rory Cridland LLB (Hons)

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

Decision date: 21 September 2016

Costs application in relation to Appeal Ref: APP/H1705/W/16/3149737 10 Winchester Street, Overton, Basingstoke RG25 3HS

- 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 Third State Pizza Company Ltd for a full award of costs against Basingstoke & Deane Borough Council.
 - The appeal was against the refusal of planning permission for change of use from a bank (Class A2) to a hot food takeaway (Class A5); installation of extraction/ventilation and other minor external alterations.
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Furthermore, it indicates that Local Planning Authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal.
 3. The application essentially relies on the fact that members of the Committee went against officer recommendation that planning permission be granted for the proposal. While the Council is not required to follow the advice of its professional officers, if a different decision is reached by members, the Council has to demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
 4. In this case, three reasons for refusal were set out in the decision notice. In respect of refusal reason 1, officers concluded that it would not harm the character and appearance of the surrounding area and would preserve the character of the Overton Conservation Area. However, little evidence has been put forward by the Council to support the assertion that the small number of alterations proposed to the frontage would be harmful. Accordingly, this reason for refusal has not been substantiated.
 5. In respect of the second reason for refusal, members concluded that the general activities of customers and delivery drivers would result in unacceptable levels of noise and disturbance to neighbouring occupiers. However, in view of its location within the retail centre, noise associated with such commercial activities is already well established. The addition of a further
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HFT in this location would not have any significant impact on the existing noise or disturbance levels which already exist. The Council has not provided any robust evidence to support their position that the proposed change of use would result in any significant increase in noise to the surrounding area. Accordingly, the assertion that it would negatively impact on neighbouring amenity has not been substantiated.

6. Turning to refusal reason 3, my decision makes clear that I do not consider the proposal would have any significant impact on highway safety and that sufficient parking exists nearby to accommodate both customers and delivery drivers. This accord with the view of the Council's Highways consultee. The Council has not provided any robust evidence to substantiate its position that there is insufficient parking nearby to accommodate the proposal.
7. Accordingly, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations the development proposed should reasonably have been permitted. As such, I find the Council to have acted unreasonably in maintaining reasons for refusal which it has failed to substantiate. This has resulted in the appellant having incurred unnecessary expense in pursuing this appeal
8. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that an award of costs is justified.

Costs Order

1. 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 Basingstoke & Deane Borough Council shall pay to Third State Pizza Company Ltd, the costs of the appeal proceedings described in the heading of this decision.
2. The applicant is now invited to submit to Basingstoke & Deane Borough 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.

Rory Cridland

INSPECTOR