

Costs Decision

Site visit made on 21 September 2016

by Siobhan Watson BA(Hons) MCD MRTPI

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

Decision date: 5 October 2016

Costs application in relation to Appeal Ref: APP/H5390/W/16/3153569 31A North End Road, London, W14 8SZ

- 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 Mr Zul Karim (Arearose Ltd) for a partial award of costs against the Council of the London Borough of Hammersmith & Fulham.
 - The appeal was against the refusal of planning permission for restaurant with ancillary takeaway (Class A3) in order to regularise the use of the property.
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Decision

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

Reasons

2. The basis of the applicant's frustration is that the Council considered the application as a takeaway instead of a restaurant. However, I can understand the Council's concern over the use of the phrase "ancillary takeaway" because if the takeaway element of the proposal were to be at such a low level as not to take the use out of A3, there would have been no need to include it in the description of development. To include "ancillary takeaway" in the description introduced ambiguity and I have sympathy with the Council's cautionary approach. If the applicant had simply removed "takeaway" from the description, the Council would have only considered the restaurant use. It seems to me, therefore, that some responsibility in this matter lies with the applicant.
3. The Council accepts that the premises has previously been used a restaurant and there is evidence to suggest that it has also been used as a takeaway. However, that is not to say the use is lawful and it was open to the applicant to seek a determination under S191 of the Act in relation to this matter.
4. As a planning application, it was before the Council to assess the amenity of existing neighbours. I disagree with the Council's conclusions and the Council has been especially injudicious in relation to the fume extractor system. The Council also appear to have disregarded the advice of its environmental health officer. Nevertheless, the Council took account of surrounding dwellings and the representations from neighbours. Therefore, the refusal on the grounds of living conditions is not quite unsubstantiated.
5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the applicant's claim for costs fails.

Siobhan Watson INSPECTOR