
Costs Decision

Site visit made on 17 October 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 19 December 2016

Costs application in relation to Appeal Ref: APP/J2210/W/16/3152601 51-52 St Dunstan's Street, Canterbury, Kent CT2 8BS

- 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 Domino's Pizza Group Limited for a full award of costs against Canterbury City Council.
 - The appeal was against the refusal of planning permission for change of use from Class A2 (financial and professional services) to Class A5 (hot food takeaway) and external and internal alterations including the installation of ventilation and extraction equipment.
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Decision

1. The application for an award of costs made by Domino's Pizza Group Limited against Canterbury City Council is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeals process and that the application needs to clearly demonstrate that this is the case. Unreasonable behaviour may be procedural and/or substantive.
 3. The applicant is seeking a full award of costs on the basis of the Council behaved unreasonably in the way it handled the application and in refusing the application.
 4. The application was made in writing and therefore I shall not repeat it in any great detail. The applicant considers that the Council behaved unreasonably because there were no objections from the highways authority or the Council's own environmental health officers and their conclusions were that the proposal was acceptable subject to appropriate conditions. The Council officers had recommended a very similar proposal for refusal. On this basis the applicant suggested that the Council behaved unreasonably in failing to properly substantiate the reasons for refusal.
 5. The Council responded that in addressing the technical matters raised by the applicant it also took account of wider amenity issues and responses from the local community. In doing so, it considered the issue of the routes for deliveries and reviewed a potential solution, to be secured by a planning condition. The Council's response to this matter addressed the representations received, considered whether they could be appropriately mitigated and
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concluded that the adverse impacts of the proposed development justified the application being refused. On this basis I do not consider that the Council failed to substantiate its reason for refusal in respect of the impact of noise and disturbance on the living conditions of occupiers of neighbouring properties.

6. With respect to highway safety potentially arising from limited parking availability I have accepted that there would be sufficient parking spaces to meet the pick-up requirements of the operation. However, there was no reason why the Council should not question the evidence presented by the applicant on the effects of the operation both by the applicant and potentially any other A5 user.
7. I have no response from the Council to the appellant's suggestion that Council officers intended to recommend the application for approval, requiring the application to be determined by the Committee, but ultimately refused the application using delegated powers. However, as I have dismissed the appeal the Council was not unreasonable in refusing the application and therefore the expense of the appeal could not have been avoided.
8. For the reasons given above I conclude that the application for an award of costs against Canterbury City Council should be refused.

Kevin Gleeson

INSPECTOR