
Costs Decision

Site visit made on 23 January 2017

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 14 February 2017

Costs application in relation to Appeal Ref: APP/H5390/W/16/3158311 64 Uxbridge Road, London W12 8LP

- 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 Adil Catering 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 a change of use of the basement and ground floor level from retail (Class A1) into a restaurant/takeaway (Use Class A3/A5); erection of a single storey rear extension with 2No air conditioning units and associated ductwork mounted above the roof of the new single storey back addition; removal of the existing awning from the shopfront and associated external alterations.
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Decision

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

Preliminary Matters

2. The appellant sets out that they are applying for an award of partial costs in relation to the Council's second reason for refusal which relates to the effects of the air conditioning units and ductwork; however, some more general issues are also raised.

Reasons

3. National Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The appellant alleges that the Council did not engage with them during the life of the application and that only very limited time and consideration was given to the proposal before it was refused. The Council point out that the proposal was the subject of pre-application advice. In addition, due to high pressures on staff resources, they state that they have little or no scope to seek amendments to schemes and will not do so where there is a fundamental problem or issue which could not readily be resolved.
5. It is notable that the appellant has made use of the pre-application service offered by the Council; it is stated that no further advice was sought prior to the application being made. I can understand that staff resources may mean

that the Council has to make decisions on whether to seek amendments to schemes and that they would prioritise those with some chance of resolution. In addition, the Council states that the requests for consultation responses were not complied with as they do not treat internal consultations responses as public information. Whilst I can understand that the appellant may feel somewhat frustrated at the absence of an opportunity to discuss and possibly amend the scheme, in the context set out, I do not find that this amounts to unreasonable behaviour by the Council who clearly have to make decisions on resources and priorities.

6. Although it appears that the officer's firm view on the scheme was only made just before it was refused, the Council's submitted officer report indicates that a full and proper consideration of the scheme was made. Notwithstanding the apparent short time-scale, I consider that this does not indicate that proper consideration was not given and so there is no unreasonable behaviour in this respect.
7. With regards to the air conditioning units, the Council points out that, amongst other things, the potential effects of this on the area and neighbours was drawn to the appellant's attention in the pre-application advice. In the light of more fundamental objections to the proposal, and in the context as set out above, the fact that the Council did not seek revisions to address this does not lead me to conclude that they acted unreasonably on this matter. Furthermore, for reasons set out in my main decision, I do not consider that the matter could have been acceptably addressed by revisions to the appeal scheme or by conditions.
8. Overall, I do not find that the Council has acted unreasonably, as envisaged by the Planning Practice Guidance and therefore an award of costs is not justified.

S T Wood

INSPECTOR