
Costs Decision

Site visit made on 7 February 2017

by Roy Merrett BSc(Hons) DipTP MRTPI

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

Decision date: 01 March 2017

Costs application in relation to Appeal Ref: APP/Q5300/W/16/3162235 92 Alderman's Hill, Enfield Southgate N13 4PP

- 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 Aykut Hilmi for a partial award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the refusal of planning permission for A3 / A1 use as coffee house to serve limited range of hot foods and also to display and sell local artist's artwork.
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Decision

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

Reasons

2. Paragraph 030 of the Government's Planning Policy Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 047 of the PPG states that Local Planning Authorities are required to behave reasonably in relation to procedural matters at the appeal.
4. Paragraph 049 of the PPG states that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. An example of unreasonable behaviour would be preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.

Reasons

5. The appellant's claim is in relation to two matters.
6. Firstly it states that the second and third reasons for refusal of planning permission, namely the alteration to the building to provide a door in the side of the existing porch and the provision of an outdoor dining area, relate to matters that were deleted from the proposal prior to the Council's decision.
7. The Council, in its letter dated 3 August 2016, acknowledged that the appellant had sought to amend the scheme. Whilst I understand the appellant's

¹ Reference ID: 16-030-20140306

frustration with the Council's handling of its planning application, it was open to the appellant to make a further application with a view to regularising the position prior to lodging an appeal.

8. Notwithstanding this, in its letter the Council did set out how it would accept the amendments, omitting the external alterations, as part of an appeal and on that basis would be able to concede refusal reason 2. It also set out the basis of how it proposed to deal with refusal reason 3. This guidance would have been useful to the appellant in terms of focussing its appeal case. Furthermore the appellant could have suggested a condition be imposed, in the event of the appeal being successful, with a view to excluding the building alteration and seating elements from the scheme.
9. Instead, the appellant confirmed that in the event of an appeal being successful for the change of use, it would be his intention to seek approval for the external alterations and external seating. He went on to refer to certain conditions suggested by the Council being reasonable in his view, in the event of the Inspector being minded to allow those elements. I therefore conclude that the appellant has benefitted from the opportunity of having these wider elements of the scheme examined at appeal, which he would have sought to secure in any event had the proposal for the change of use been successful on its own. I do not therefore consider that the appellant has been placed at a disadvantage in this respect.
10. On the second point, the appellant says that the Council has failed to offer clear justification as to why the outdoor seating would be contrary to Council policy. Having referred to its report and statement, it was clear to me that the basis of the Council's concern was that the seating area would unacceptably impede the free flow of pedestrians. Whilst I did not agree with the Council, it was nevertheless entitled to reach the view that the narrowing of the highway to the extent proposed would be unacceptable in this regard.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett

INSPECTOR