



Costs & Decisions Team

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Your Ref:
JD/FTR/CostHartlepool/2017
Our Ref: APP/H0724/W/16/3152211

Date: 27 April 2017

Dear Madam

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 322
LAND AT 76 CHURCH STREET, HARTLEPOOL, TS24 7DN
APPEAL BY MR T BATES: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspector's decision dated 7 December 2016 allowing the above appeal. It was against Hartlepool Borough Council's decision, dated 16 May 2016, to refuse planning permission for the change of use of ground floor to hot food take-away and residential flat over first and second floor on land described above.

2. This letter deals with your application¹, on behalf of the appellant, for an award of costs against the Council as made in written correspondence dated 14 June 2016 and 10 January 2017. The Council replied on 9 January and 10 April 2017. As these costs submissions have been made available to the parties it is not proposed to summarise them. They have been carefully considered.

Summary of decision

3. The formal decision and costs order are set out in paragraphs 15 and 16 below. The costs application succeeds and a full award of costs is being made.

Basis for determining the costs application

4. In planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense.

5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party which do not give rise to a local inquiry where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

¹ The Planning Inspectorate's procedural letter of 30 December 2016 explained the circumstances in which the Secretary of State had accepted the costs application for consideration.

6. The costs application has been considered in the light of the costs guidance in the Government's Planning Practice Guidance (PPG), the appeal decision, the appeal papers, the written costs correspondence and all the relevant circumstances.

Reasons for the decision

7. All the available evidence has been carefully considered. The outcome of a costs application does not necessarily follow the outcome of the related appeal but an award of costs may be made where unreasonable behaviour by one party has caused another party in the appeal proceedings to incur unnecessary expense.

8. The decisive issue in this case is considered to whether or not the Council acted unreasonably, with the result that the appellant was put to unnecessary expense in appealing, by refusing planning permission and by preventing/delaying development which should have been permitted having regard to its accordance with the development plan, national policy and any other material considerations. The guidance at 049 of the PPG is considered particularly relevant.

9. The main issues on the appeal, as identified by the Inspector, were:

- the effect of the proposal on the health and wellbeing of local residents;
- the effect of the proposal on parking and highway safety;
- the effect of the proposal on the character and appearance of the area; and
- whether the proposed development would provide acceptable living conditions for future occupiers with particular regard to external space.

Conclusions

10. The Council refused planning permission contrary to the advice and recommendation of their professional officers. The relevant Committee Report noted that Council officers considered that the proposal was acceptable as it would not result in any significant or disproportionate impact on the health and well-being of the surrounding community nor would there be any unacceptable impact in relation to crime, waste management, neighbour amenity or highway safety. Indeed officers considered that the economic and environmental benefits of the scheme outweighed any impact on the social aspects, as part of achieving sustainable development.

11. Committee Members are not bound to accept the recommendations of their officers but if their advice is not followed a Council will need to show reasonable planning grounds for taking a contrary decision and will need to produce relevant evidence on appeal to support the decision to refuse planning permission.

12. The Planning Inspector, in her appeal decision, also came to the conclusion that planning permission should be granted. With reference to health and well-being while the Inspector appreciated the concerns raised by the Council's Health Improvement Team, she agreed with the views of Council officers that due to the number of existing Hot Food Takeaway's (HFTs) in the area there was no substantive evidence to suggest that the addition of one more HFT in the location could be attributed to any material decline in the health and well-being of local residents. Furthermore, the Inspector noted that the Council had no supported adopted or emerging local policy on this matter to suggest that the proposal would be detrimental to the health and well-being of the residents of the area. The Inspector therefore agreed with officers that the proposal was acceptable in relation to the impact on health and well-being and was in accordance with paragraph 17 and 171 of the National Planning Policy Framework.

13. With regard to parking and highway safety the Inspector agreed with officers that because of the rapid turnover of short stay customers arriving by car the proposal would have a minimal impact on parking and traffic. She was satisfied that there was sufficient short term parking either on Church Street or within the public car park at the rear to cater for the level of car parking likely to be needed. She therefore concluded that the proposal would not result in indiscriminate parking to the detriment of highway safety and therefore there could be no conflict with Policy GEP1 of the Local Plan. While the Council were concerned with the effect of the proposal on the character and appearance of the area and the living conditions of local residents due to waste management arrangements, the Inspector's comments at paragraphs 12 to 15 of the appeal decision have been noted. She commented that waste bins would be located within the rear yard of the property and on collection days would be collected from the rear lane. The Council's Waste Management Team had not raised any concerns with this area being used for the storage of waste bins and in the absence of any evidence to the contrary there was no reason to believe that the proposal would lead to the likely storage of bins outside of the site and therefore the proposal would not have an adverse impact on the character and appearance of the area. The Inspector also concluded that the proposal would not materially harm the living conditions of future occupiers with regard to external space given that the size of the waste bins would allow free passage within the yard and access to the residential unit would also be available through the front of the property and not restricted solely to the rear yard.

14. In the circumstances described above the Secretary of State concludes that this is a case where the Council have not shown, on appeal, that they had reasonable planning grounds for taking a decision (to refuse planning permission) contrary to the advice of their professional officers. The Secretary of State also notes that the Council have since granted planning permission for the same development as the appeal proposal. While the Council say that the re-submitted planning application included additional information that sought to address members concerns, the view is taken that there is no evidence of any material change in circumstances following refusal of the appeal application to account for the Council's decision to take a different view regarding the merits of the proposal. Although the Council have referred to the appellant's submission of an additional plan indicating public car parking availability, Council officers had previously advised when considering the appeal application that there were no highway or traffic objections to the proposal given that it was considered that there was sufficient short stay parking available close to the appeal site. The Secretary of State therefore concludes that the Council's refusal to grant planning permission on the appeal application was unreasonable in the particular circumstances with the result that the appellant was put to unnecessary expense in appealing. A full award of costs will therefore be made.

FORMAL DECISION

15. The Secretary of State has decided that a full award of costs on grounds of unreasonable behaviour resulting in unnecessary expense is justified in the particular circumstances.

COSTS ORDER

16. Accordingly, the Secretary of State, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 78 and 322 of the Town and Country Planning Act 1990, and all other powers enabling him in that behalf, **HEREBY ORDERS** that Hartlepool Borough Council shall pay to Mr T Bates his costs of the appeal proceedings before the Secretary of State; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal by Mr T Bates against the Council's refusal of planning permission more particularly described in paragraph 1 above.

17. You are now invited to submit to Hartlepool Borough Council details of those costs with a view to reaching agreement on the amount. A copy of this letter has been sent to them.

Yours faithfully

S Parsons

STEVE PARSONS

Authorised by the Secretary of State
to sign in that behalf