
Costs Decision

Site visit made on 3 May 2017

by Roy Merrett BSc(Hons) DipTP MRTPI

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

Decision date: 26 May 2017

Costs application in relation to Appeal Ref: APP/R5510/W/16/3168106 30 New Broadway, Uxbridge Road, Hillingdon, London UB10 0LL

- 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 Karnail Brar for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the refusal to grant approval required under a development order for change of use from a shop (Use Class A1) to 1 x 2 bedroom flat (Use Class C3).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 049 of the PPG² advises 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. Examples of unreasonable behaviour include:-
 - 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.
 - failure to produce evidence to substantiate each reason for refusal on appeal.
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The Council's reason for refusing the application was that the loss of the retail use would erode the retail function and attractiveness of the Core Shopping Area of the Hillingdon Heath Local Centre (HHLC) resulting in harm to the viability and vitality of that Centre. This reason was predicated on the assumption that the appeal site was situated within the Core Shopping Area of the HHLC.

¹ Reference ID: 16-030-20140306

² Reference ID: 16-049-20140306

5. Saved Policy S9 of the Hillingdon Local Plan Part Two - Saved Unitary Development Plan Policies 2012 sets out that within Local Centres, changes of use from A1 shops will only be granted outside Core Areas. The implication of this is that such changes of use within the Core Areas would be unacceptable in principle.
6. The appellant provided evidence, undisputed by the Council, that the appeal site was situated outside the Core Area of the HHLC. Accordingly the basis for the Council's refusal reason was fundamentally flawed.
7. Furthermore, despite the Council asserting that it is reasonable to expect the unit to continue to be used for retail services, what is proposed is permitted development, subject to the relevant provisos in the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 being satisfied.
8. From the evidence before me, the Council did not request the appellant to provide an assessment of impact and provided no evidence of its own to show that the change of use would result in an unacceptable impact on the adequate provision of services or the sustainability of the shopping area. It therefore failed to provide evidence to substantiate its refusal reason which was based on an inaccurate assertion.
9. I therefore find, irrespective of concerns raised by the appellant regarding pre-application advice received, for the reasons set out above, that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a full award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Hillingdon shall pay to Mr Karnail Brar, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Roy Merrett

INSPECTOR