
Costs Decision

Site visit made on 19 December 2017

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 03 January 2018

Costs application in relation to Appeal Ref: APP/W0734/W/17/3181751 2A Woodrow Avenue, Middlesbrough TS7 8EZ

- 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 S Chambers and Mr M Ali for a full award of costs against Middlesbrough Borough Council.
 - The appeal was against the refusal of planning permission for a change of use from (Use Class A1) shop to hot food takeaway (Use Class A5).
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal or with respect to procedural matters.
3. Whilst the PPG sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive.
4. The two main strands to the application for an award of costs by the applicants are that firstly the Council misinterpreted planning policy and that a sequential test was unnecessary. Secondly, that the applicants contend that the Council has failed to demonstrate harm within the second reason for refusal relating to character and appearance.
5. The planning history of the site has been noted and it is appreciated that the outcome of the application will have been a disappointment to the applicants. However, in regard to the issue of the sequential test, the necessity of this has already been confirmed within my appeal decision and will not be repeated here in any detail.
6. In summary, the National Planning Policy Framework (the Framework) confirms that uses such as hot food takeaway units comprise town centre uses. Furthermore, the Framework advises that a sequential test should be applied to planning applications for main town centre uses that are not in an existing town centre and are also not in accordance with an up-to-date local plan.

7. Accordingly, it is considered that as the site is located outside of any existing town, district or local centre and that Policy CS 13 of the Middlesbrough Local Development Framework Core Strategy is an up to date policy, the Council was correct to request a sequential test. This does not amount to unreasonable behaviour on their part.
8. With regard to the second reason for refusal, it will be seen from my appeal decision that no harm in terms of character and appearance was found. Nevertheless, the reasons for refusal in regard of character and appearance set out in the decision notice are complete, precise, specific and relevant to the application. The decision notice also clearly states the policies of the Framework that the proposal would be in conflict with. In addition, a sufficiently substantial case was made in support of all the reasons for refusal within both the Council's delegated report and the subsequent appeal statement. The fact that the Council concluded differently to my decision on this matter does not amount to unreasonable behaviour on their part.

Conclusion

9. It is therefore found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. As such there can be no question that the applicants were put to unnecessary or wasted expense. Accordingly, the application for an award of costs is refused.

Helen Cassini

INSPECTOR