



Costs Decision

Site visit made on 29 November 2017

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2018

Costs application in relation to Appeal Ref: APP/A2280/W/17/3180802 146 Hempstead Road, Hempstead, Gillingham ME7 3QE

- 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 Luthfur Rahman for a full award of costs against The Medway Council.
 - The appeal was against the refusal of planning permission for the permanent change of use of property as restaurant with home delivery and overnight accommodation for staff without complying with conditions attached to planning permission Ref MC/14/2786, dated 31 December 2014.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The application essentially is based on the fact that the Council's Committee acted unreasonably in overturning a Council Officer recommendation that the application be approved, and that this has resulted in unnecessary wasted costs in pursuing an appeal.
4. PPG indicates that local planning authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal. In this case, whilst the recommendation of Council Officers was not accepted the decision is one which is a matter of judgement. Council Members on the Committee were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view.
5. Whilst it will be seen from my decision that I disagree with Council Members that, the scheme should be refused planning permission, the reason for refusal on the decision notice is clear and precise in relation to the considered harm to living conditions of residents living nearby. Moreover, the Council has produced a reasoned statement to substantiate the reason for refusal with reference to a relevant local plan policy. Although I have reached a different judgement on the planning merits of the case, this does not mean that the Council acted unreasonably in taking its decision.

Conclusion

6. I do not consider that the Council has failed to properly evaluate the proposal. I have found that the Council had reasonable concerns about the impact of the proposal that justified its decision. The appellant had to address those concerns and the representations of third parties in any event. The appeal could not therefore have been avoided.
7. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Rory MacLeod

INSPECTOR