



Costs Decision

Site visit made on 17 June 2019

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Costs application in relation to Appeal Ref: APP/H4315/W/19/3225883 1-3 Bridge Street, Newton le Willows, St Helens WA12 9BE

- 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 Delovan Salah for a full award of costs against St Helens Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the change of use from a shop (Class A1) to a hot food takeaway (Class A5) along with the installation of an external flue and elevational changes.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 reasons for refusal do not indicate a conflict with Policy E2 of the St Helens Unitary Development Plan (UDP). The minutes of the Planning Committee meeting at which the application was decided similarly make no reference to this policy. That the site should be regarded as part of a Primary Retail Frontage to which its Supplementary Planning Document refers or within the defined Prime Shopping Area (PSA) under UDP Policy E2 are also conspicuously absent as grounds of objection in the reasons for refusal. If, as the applicant suggests, the Planning Committee were misinformed or unduly swayed by the advice of Officers to rely on these matters, there are few clues to support that opinion in the reasons for refusal or in the minutes of the meeting. In other words, the decision to refuse planning permission does not appear to have turned on these particular considerations.
4. Assessing matters such as the effect of the proposal on the character, appearance or vitality of the town centre or on the living conditions of others is partly subjective. It is inevitable that opinion will vary. To my mind, the Council was entitled to reach the decision it did given the prominent position of the property in the town centre, the existence of other similar uses and close proximity to existing residential accommodation. While applicant disagrees with this stance, it is an approach that the Council was entitled to take.
5. The applicant is critical of the Council in failing to acknowledge that the guidance within its Supplementary Planning Document, *Hot Food Takeaways* was somewhat dated and out of step with the National Planning Policy

Framework (the Framework). However, the Council does not share that view and gives a reasonable account to support its opinion and the weight that it attached to the guidance within the document. While the Officer's report does not draw out some of the policies and tests in the Framework to which the applicant has referred, notably in relation to town centres, it is inevitably a brief summary that identifies some of the key points.

6. Officer's advice to the Planning Committee relied to some extent on the findings of the health check assessment of Earlestown Town Centre that was carried out in June 2016. Although a little dated, the results provided in that assessment were comprehensive, authoritative and the latest available. To appraise the development sought in the light of those findings was not an unreasonable approach to take.
7. The applicant considers that the Council's concerns with regard to the living conditions of others could have been resolved through the imposition of suitable conditions. However, the concerns of the Council and others related to the potential for noise and disturbance generated from outside of the premises by, for instance, customers congregating and behaving inconsiderately. In my experience, the suggested conditions would have been unlikely to provide adequate mitigation from this source of nuisance. No other conditions were put forward to address and resolve these particular matters.
8. My assessment of the effect of the proposal on the character, appearance and health of the town centre and the living conditions of others differs from the Council's approach. This arose mainly because I made different judgments on the evidence before me, rather than because of any significant inadequacies in the content of the Council's case. That I have come to a different conclusion, and allowed the appeal, does not mean that the Council failed to show clearly why in its view planning permission should be withheld or that it has not substantiated its case.

Conclusion

9. Overall, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the application for an award of costs is refused.

Gary Deane

INSPECTOR