



Costs Decision

Site visit made on 27 March 2019

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2019

Costs application in relation to Appeal Ref: APP/C1950/W/18/3216267 4 Maynard Place, Cuffley, Potters Bar EN6 4JA

- 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 Senhouse of nails Limited for a full award of costs against Welwyn Hatfield Council.
 - The appeal was against the refusal of planning permission for change of use from retail (A1) to a mixed use retail and beauty salon (A1 and Sui Generis).
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Decision

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

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 Appellant states that the Local Planning Authority (LPA) behaved unreasonably in that it did not communicate concerns about the application, and it also made its decision was made on an erroneous basis. The Appellant considers these resulted in an unnecessary refusal of planning permission and an unnecessary appeal and has applied for full costs.
4. The Appellant claims that the LPA made its decision on an erroneous basis in that it miscalculated the percentage of units not in Class A1 retail use. Saved Policy TR26 of the Welwyn Hatfield District Plan (DP) seeks a minimum of 60% of the units to remain in Class A1 retail use and resists non-retail uses unless certain criteria are met. The LPA has clarified the basis on which it reached its calculation and the proposal does conflict with this element of the policy. Whilst the LPA did not consider the consistency of this saved policy against the Framework or balance this with other considerations, the LPA was not acting unreasonably in finding conflict with the Policy.
5. The LPA applied policy SADM4 of the Welwyn Hatfield Draft Local Plan 2016 (LP) with full or significant weight and did not consider its early stage of preparation or consistency with the Framework. However, this would not have changed its conclusions on this matter. Whilst the LPA stated that no marketing information was provided to suggest a lack of retail demand in accordance with TR26; such information is not required by the policy and does not appear to have been requested, this also would not have changed its conclusions on this matter of conflict with Policy TR26.

6. The outcome of the application would not have been different on the basis of these considerations. This behaviour has not resulted in refusal of planning permission alone and therefore did not result in an unnecessary appeal.
7. With respect to the reason for refusal relating to living conditions of nearby residential apartments, the LPA has not refuted that a telephone conversation occurred between the Appellant and the Planning Officer during which the Appellant was reassured that no further information was required. The Appellant claims this conversation took place shortly before the LPA refused to grant planning permission by notice dated 26 September 2018. That notice included insufficient information in respect of odour from chemicals and noise from mitigating plant as a reason for refusal. Had the LPA co-operated with the Appellant, this information could have been provided. The LPA did not do this. Moreover, Paragraph 54 of the National Planning Policy Framework (the Framework) requires LPAs to consider whether otherwise unacceptable development could be made acceptable through the use of conditions. The LPA also did not do this. In these circumstances, these actions resulted in an unnecessary reason for refusal. However, since the LPA had an objection to the principle of the change of use, based on a policy conflict, this additional reason for refusal did not result in an unnecessary appeal.
8. I therefore find that no unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is not justified.

Kim Langford Tejrar

INSPECTOR