
Costs Decision

Site visit made on 23 July 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2019

Costs application in relation to Appeal Ref: APP/V0510/W/19/3227331 85 High Street, Bottisham, Cambridgeshire CB25 9BA

- 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 Ms Polly Howe for a full award of costs against East Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for the change of use of part ground floor from restaurant into residential, forming one dwelling, including associated works to car park and amenity areas.
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Decision

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

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 local planning authorities are at risk of an award of costs if they have prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. They are also at risk if they have relied on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
3. The Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence substantiating that reasoning. Any such case must be fully justified in the face of opposing evidence. The officer report provided analysis of the proposed development, which the Council considered would not meet the requirements of the local plan policy in respect of Commercial Community Facilities. However, the Council did not clarify their approach to the identification of the restaurant as a facility of this nature.
4. There was further justification for the Council's reasoning in their statement of case for the appeal. Moreover, the Council considered that the restaurant fulfils the same role as a public house or other buildings, where meeting, socialising and interacting takes place. Whilst I recognise that the list of qualifying uses for Commercial Community Facilities in the development plan was not exclusive to those directly referenced, there was still little support within this or national policy for the Council adopting its position.

5. Given that the lists of Commercial Community Facilities in local and national planning policies are not closed, it is a matter of professional judgement as to whether the restaurant use would constitute a 'Commercial Community Facility'. The Council therefore had grounds to apply those policies; that would not constitute unreasonable behaviour. However, the Council failed to produce objectively analysed evidence to substantiate their conclusion that the restaurant should be considered as a Commercial Community Facility. As such, the appeal was unnecessary and the preparation of evidence to support the appeal is likely to have led to unnecessary expense.
6. I therefore find that 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 justified.

Costs Order

7. 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 East Cambridgeshire District Council shall pay to Ms Polly Howe, 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.
8. The applicant is now invited to submit to East Cambridgeshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul Thompson

INSPECTOR