



Costs Decision

Site visit made on 25 July 2019

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2019

Costs application in relation to Appeal Ref: APP/D5120/W/19/3226884 325 Bexley Road, Erith DA8 3EX

- 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 V Adebiyi for a full award of costs against the Council of the London Borough of Bexley.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a development described as "Prior Approval Notification for a change of use of ground floor of the property at 325 Bexley Road, Erith, DA8 3EX from Use Class A1 (Retail) to Use Class A3 (Restaurant) together with installation of an extraction flue to the rear elevation. Please see and read the documents attached: 1. Planning Statement. 2. DFRA Odour Assessment. 3. Noise Assessment".
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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 another party to incur unnecessary or wasted expense in the appeal process. The PPG advises that local planning authorities are at risk of an award of costs for not determining similar cases in a consistent manner, or for refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the development to go ahead.
3. The Council's reason for refusal states that insufficient information was provided with the application to demonstrate that acceptable mitigation measures would be provided to protect residents from odour and noise associated with the use and ventilation of the premises.
4. The appellant refers to two previous applications at the site: a planning application for the change of use to a takeaway¹ and, subsequently, an application seeking prior approval under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for a change of use to a restaurant or café². Whilst both

¹ Application reference: 18/01015/FUL

² Application reference: 18/02758/PRIOR

were refused for other reasons, in both cases the Council's Environmental Health Officer's (EHO) recommended conditions requiring the installation of an extract ventilation system in accordance with the submitted plans.

5. On the basis of the evidence before me it is clear that the EHO considered that the original application for planning permission³ included details of an acceptable extract ventilation system. Accordingly, it is evident that, on the basis of the details submitted in that case, the Council was satisfied that it had sufficient information to be certain that adequate sound and odour mitigation would be provided, and was content for the works to be carried out in accordance with that information, with no outstanding matters requiring subsequent approval.
6. It appears that the subsequent application for prior approval⁴ was not accompanied by details of sound insulation or extract ventilation. However, nor does that application appear to have included anything to suggest the proposals in that respect differed from those put forward under the previous planning application. On that basis, the Council appears to have been content, in principle, to include a condition requiring the details to be carried out in accordance with those plans which had been submitted and considered to be acceptable as part of the original application for planning permission.
7. In contrast, the evidence before me indicates that the details of the proposed extract ventilation system which accompanied the second application for prior approval, which forms the basis of the current appeal, differed from that which had accompanied the original application for planning permission. In particular, the EHO states that the plans for the current appeal do not include certain details of the odour abatement system which had previously been referred to. The EHO also refers to inconsistencies between the planning statement and the appellant's Odour and Noise Impact Assessments in this case, making it unclear as to whether the particular odour mitigation measures recommended in those Assessments could or would actually be incorporated in the proposed extraction system. The EHO's concerns also appear to have been based on noise recordings of the extraction equipment which has been installed at the premises. Those recordings do not appear to have formed part of the original planning application proposal and, the EHO states, suggest the need for significant alteration and mitigation to comply with relevant guidance.
8. The evidence before me therefore indicates that, in the current case, the Council was not presented with the same information regarding the proposed extraction equipment which had been submitted to it previously. Therefore, and given the uncertainties which evidently arose with regard to the information submitted, it was not unreasonable for the Council to reach a different conclusion in this case. It is clear from the evidence before me that, given the apparent inconsistencies between some of the submitted documents, the Council did not feel certain as to the specific nature and detail of the extraction works proposed in this case, or whether those works would incorporate the necessary measures to adequately mitigate noise and odour. The Council has therefore not behaved unreasonably in concluding, as a matter of planning judgement, that a condition requiring the works to be carried out in accordance with those submitted details would be inappropriate in this case.

³ Application reference 18/01015/FUL

⁴ Application reference 18/02758/PRIOR

9. It will be seen from my decision that I have dismissed the appeal on the basis that it does not comply with the terms and conditions of permitted development in the GPDO. Nonetheless, whilst the Council may not have specifically raised that matter, for the reasons given I find that the Council has not behaved unreasonably in refusing the application for the reasons set out on its decision notice. Accordingly, it follows that the appellant has not been put to unnecessary or wasted expense in pursuing this appeal.

Conclusion

10. For the reasons given, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

Jillian Rann
INSPECTOR