
Costs Decision

Site visit made on 2 September 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2019

Costs application in relation to Appeal Ref: APP/N4720/W/19/3231674 159 Cardigan Road, Leeds West Yorkshire LS6 1LJ

- 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 Leeds City Council for a full award of costs against Mr Jamie Bloomfield.
 - The appeal was against the grant subject to conditions of planning permission for the change of use from tattoo studio (class use sui generis) to restaurant/cafe (class use A3).
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Decision

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

Reasons

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG also advises that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.
3. Appellants are required to behave reasonably in relation to procedural matters on the appeal. Examples of unreasonable behaviour which may result in an award of costs include introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen.
4. The appellant's initial planning application was for an A3/A5 use, which, following discussions with the Council (the applicant) was revised to an A3 use only. The applicant confirms that the appellant did not raise any concerns with this approach. The appellant's appeal submission sought to change the use of the appeal property from the approved A3 use to an A5 use. Whilst the A5 use was initially considered by the applicant, and was presumably deemed to be unacceptable, hence the revision to an A3 use only, it did not form part of the application that was determined. Therefore, such a change of use cannot be considered as part of the appeal process as it is a significant change to what has already been approved. Had the appellant contacted the applicant following the determination of the application and prior to the submission of the appeal, they would no doubt have informed him that this part of the appeal submission had no reasonable prospect of succeeding, primarily because the

planning application was not determined on the basis of the change of use being to an A5 use.

5. As a result, I find that the applicant behaved unreasonably in submitting an appeal seeking to evolve the approved development from an A3 use to an A5, which did not form part of the planning application determined by the applicant. The correct course of action would have been to have first applied for planning permission for the change of use to A5 and then, should the applicant have refused permission, appeal it. The appellant has provided no evidence to justify why this course of action was not taken and the incorrect process of seeking to evolve the scheme through the appeal process was.
6. As the planning application that was determined by the applicant, which was revised by the appellant, did not include for an A5 use, the appeal submission for such a use was tantamount to substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen. As there is no evidence that the appellant had correspondence with the applicant following the determination of the planning application, the applicant would have been unaware of the appellant's intention to pursue a change of use to an A5 use. As this had no reasonable prospect of succeeding, the applicant's preparatory work in making its case, and the costs in doing so, was unnecessary.
7. The appellant's appeal submission also sought the variation of condition 5 and the removal of condition 6. His grounds for appeal in respect of these conditions were clearly set out and I do not consider that this amounts to unreasonable behaviour.

Conclusion

8. I conclude therefore, in respect of the appellant's attempt to seek a change of use to an A5 use, unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated. However, unreasonable behaviour has not been demonstrated in respect of the appellant's appeal against condition Nos 5 and 6. As such, a partial award of costs is justified.

Costs Order

9. 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 Mr Jamie Bloomfield shall pay to Leeds City Council, the costs of the appeal proceedings described in the heading of this decision to those incurred in respect of the change of use to an A5 use.
10. The applicant is now invited to submit to Mr Jamie Bloomfield, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alexander Walker

INSPECTOR