



Costs Decision

Site visit made on 14 January 2020

by **N Thomas MA MRTPI**

An Inspector appointed by the Secretary of State

Decision date: 12 February 2020

Costs application in relation to Appeal Ref: APP/D5120/X/19/3230123 25 Eastcote Road, Welling DA16 2SS

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs Saifu and Jesmeen Rhman for a full award of costs against the Council of the London Borough of Bexley.
 - The appeal was against the refusal of a certificate of lawful use for described as: *the home kitchen will be used to cook food for sale off site on the following week days and hours: Monday to Saturday 15:00-17:00 only cooking with no inward deliveries, and no more than 5 outward trips evenings to 21:30; NB no use Sundays or bank holidays.*
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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 the party applying for costs to incur unnecessary and wasted expense in the appeal process.
3. Paragraph 049 of the PPG¹ advises that local planning authorities could be at risk of a substantive award if they prevent or delay development which should clearly be permitted, fail to produce evidence to substantiate each reason for refusal, make vague, generalised or inaccurate assertions about a proposal, which are unsupported by any objective analysis, or act contrary to or not follow well established case law.
4. The appellant states that the Council relied on the representations made by a neighbour which were based on different circumstances, relied on concerns in relation to environmental health that are not relevant to the proposal, did not properly engage with s192 of the 1990 Act, the definition of development, or relevant case law. The appellant also states that the Council's decision was contrary to advice it had given at a pre-application stage.
5. The Council has clearly made its own appraisal, based on the information provided by the appellant. While it refers to the comments made by the neighbour, it was not reliant on them. The comments from the Environmental Health Officer form part of its necessary consideration of the planning consequences of the proposal. While there is no explicit discussion in the planning officer's report of the definition of development or the relevant case law, the Council has explained its reason for refusal in its appeal statement.

¹ Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

There is no reason to believe that the Council did not engage with s192 of the Act. Irrespective of the decision I have reached in relation to the appeal, I do not agree that references to relevant case law and the definition of development would have resulted in the Council reaching a different decision.

6. Informal advice given before an application is made is provided without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all material factors. Furthermore, I note that in its response the Council advised that the application would make it transparent as to what would be taking place, and that the appellant would be advised if planning permission were needed.
7. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

N Thomas

INSPECTOR