



Costs Decision

Site visit made on 7 January 2020

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2020

Costs application in relation to Appeal Ref: APP/Z5060/W/19/3239049 36-38 Station Parade, Barking IG11 8DR

- 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 Mr Siraj Deane for a full award of costs against the Council of the London Borough of Barking and Dagenham.
 - The appeal was against the refusal for the notification of a proposed change of use of retail unit (Class A1) to 4 x studio flats (Class C3).
-

Decision

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

Reasons

2. Paragraph 30 of the National Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Applicant submits that the Council has acted unreasonably by refusing a prior approval application for a change of use from an A1 to and C3 use which would be otherwise permitted development under Class M of Part 3 of the General Permitted Development(England) Order 2015 (GPDO) (as amended).
4. They reason that the Council contradicted themselves on a previous prior approval application 19/00242/PRIRET, by describing the stock room area as ancillary to the A1 function of the main shop within the shopping parade, although in the subsequent application, they considered the building to function as a Sui Generis use.
5. However, the previous decision was refused as an extension would have resulted in the external dimensions of the building extending beyond the external dimensions of the existing building. On this basis, development is precluded from permitted development by Class M.1 of the GPDO and the proposal was refused.
6. The Applicant sought to re-apply for prior approval without any increase to the external dimensions of the building, however this was refused. I read from the Council's Statement of Case that they considered the circumstances

of the building had changed as it had taken on its own independent commercial use, to which they had evidence in this regard hence they reached a contradictory view to refuse the application. However, there is no statement of case from the Council to substantiate this claim, just an officer report and I can't find any reference to this evidence.

7. In my assessment of the appeal, I have however found in favour of the proposal as I consider the building functions as a stock room ancillary to the A1 retail unit and would benefit from permitted development under Class M of the GPDO. Nevertheless, I am not persuaded that the Council have acted unreasonably by refusing the prior approval application as they have adequately justified their reasoning behind the decision based on their own evidence that the unit was operating as a different use.
8. I therefore find that no unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that an award of costs is not justified. In respect of the applicant seeking compensation due to delay to building works, no award of costs can extend to compensation for indirect losses as costs should generally relate to the appeal process and the Applicant will have had to submit a planning application, irrespective of whether permission was granted or not.

Alison Scott

INSPECTOR