



Costs Decision

Site visit made on 17 February 2020

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2020

Costs application in relation to Appeal Ref: APP/L2440/W/19/3240662 Unit C, 15 Mandervell Road, Oadby, Leicestershire LE2 5LQ

- 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 M Kazilionis for a full award of costs against Oadby & Wigston Borough Council.
 - The appeal was against the grant subject to conditions of planning permission Ref 19/00216/COU for change of use from storage and distribution (Use Class B8) to a gym (Use Class D2).
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) 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.
3. The Guidance advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, citing a number of examples. This includes that of a local planning authority "imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework (the Framework) on planning conditions and obligations."
4. In allowing the appeal I found that the conditions in dispute did not meet the Framework 'tests' of necessity, enforceability or reasonableness, as the applicant could not reasonably have been expected to comply with the conditions and there was no substantive evidence to support the need for the conditions in the interests of parking provision and highway safety.
5. From the evidence before me, the Council was aware prior to its decision that the applicant did not own the containers or the car park. This was evident from certificate B on the planning application form and later in the applicant's email accompanying the parking plan. The matter was also raised and debated at the Planning Committee Meeting. However, the Council still included the disputed conditions.
6. The Council states that had the applicant spoken to officers after the decision, there may have been scope to address matters without an appeal. However,

there is evidence that the applicant did send an email the day after the Planning Committee Meeting raising concerns over the disputed conditions and seeking the Council's comments, but none were forthcoming. In any event, this does not alter that the terms of the conditions did not meet the Framework tests in the first place.

7. Accordingly, the Council acted unreasonably by attaching conditions which did not meet the Framework tests. The applicant consequently incurred the unnecessary expense of lodging the appeal.
8. The Guidance explains that the costs decision can only address the principle of whether costs should be awarded and not the amount. The breakdown of the costs is a matter to be settled between the parties.
9. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Oadby & Wigston Borough Council shall pay to Mr M Kazilionis, 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.
11. The applicant is now invited to submit to Oadby & Wigston Borough 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.

Adrian Caines

INSPECTOR