
Costs Decision

Site visit made on 22 January 2020

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2020

Costs application in relation to Appeal Ref: APP/E2001/W/19/3236395 137- 143 Queen Street, Withernsea HU19 2DJ

- 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 Micheal Junaid for a full award of costs against East Riding of Yorkshire Council.
 - The appeal was against the refusal of planning permission for proposed Change of Use A2 > C2 (Proposed Supported Accommodation for 16-21 year olds) and A1 (Retail).
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Decision

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

Reasons

2. The Applicant submits that the Council has acted unreasonably in going against the advice of its professional officers without good reason and failed to substantiate the objection on the grounds that the proposal would fail to create a safe, inclusive and accessible environment which would promote health and well-being and a high standard of amenity for users. Further, the Council has not substantiated the objection that the development would undermine the quality of life and community cohesion due to crime and disorder and the fear of crime.
3. The National Planning Practice 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 or wasted expense in the appeal process.
4. The PPG is clear that costs cannot be claimed for expenses incurred as part of the determination of a planning application. However, actions at the time of the planning application can be taken into account if the applicant has proceeded to make an appeal. Examples are provided of the type of behaviour by a local planning authority which may give rise to an award of costs, although the list is not intended to be exhaustive. One such example is persisting in objections to a proposal, or elements of it, which have previously been found to be acceptable in an appeal decision¹.
5. Another appeal was determined in March 2019². The previous proposal was similar to that forming the subject of this decision except that the whole of the property would be converted to Class C2 use, with no retail element at street level.

¹ Planning Practice Guidance Paragraph:049 Reference ID: 16-049-20140306

² Appeal reference APP/E2001/W/18/3214240 dated 26 March 2019

6. The Council's previous reason for refusal regarding the loss of a town centre use within a primary shopping area is not at issue in the current appeal. However, the same objections in relation to the level of crime in the area, and the absence of outdoor space provision, and thus the position of the Council that the property was in an unsuitable location and type for the proposed C2 use, has been raised in the case of both appeals.
7. The Inspector in the previous appeal concluded that neither the location of the site within a high crime area, or the absence of an outdoor amenity space provided good reasons to prevent the proposal from proceeding. Rather, he expressed clear support for the principle of the use, and his reasons for dismissing the appeal related only to the loss of ground floor frontage and the effect that would cause to the vitality and viability of the town centre.
8. In response to the current proposal, the Council received strong objections from the Humberside Police and expanded its reason for refusal to include the point that it would be inadvisable to accommodate vulnerable people in a high crime area. The Council does not suggest that this point constitutes a new matter which was not considered by the previous Inspector. Nor does it suggest that other matters were brought forward as a result of the appeal proposal to require reconsideration of these issues. Consequently, I do not see substantive new evidence in relation to either matter.
9. Therefore, given the previous appeal decision, there was little if any prospect that the Council's reasons for refusal would be supported if an appeal was made against the refusal of planning permission. Whilst the Committee was entitled to reach a decision based on its own view of the merits of the application, the planning officer report clearly advised the terms of the previous appeal decision and that concerns that the proposed change of use would not be acceptable due to lack of amenity space or issues relating to crime in the area were not supported.

Conclusion

1. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, described in PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

2. 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 the East Riding of Yorkshire Council shall pay to Mr Micheal Junaid , the costs of the appeal proceedings described in the heading of this decision.
3. The applicant is now invited to submit to East Riding of Yorkshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Tim Wheeler

INSPECTOR