

Costs Decision

Site visit made on 3 June 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

Costs application in relation to Appeal Ref: APP/Q3820/W/19/3243637 First Floor Only, 50-54 High Street, Crawley RH10 1BT

- 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 Crawley Borough Council for a full award of costs against Mr J Gluck (Flexgate Properties Limited).
 - The appeal was against the refusal to grant approval for the change of use of offices (Class B1a) to form 6 apartments.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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 PPG¹ also sets out an expectation that parties will normally meet their own expenses.
3. Planning Practice Guidance states that an appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. In this regard, the application for an award of costs has been made by the Council on two grounds. Firstly, the Council has argued that insufficient evidence was provided in respect of the existing use of the building to demonstrate that Class O of Part 3 of Schedule 2 of the GPDO² was applicable and that previous reasons for refusal had been addressed. The other suggested ground for a costs award is on the basis that the dismissal of other appeals made by the appellant should have led the appellant to conclude that an appeal at this site would also have been unsuccessful.
4. I have not found the appellant's evidence in relation to the existing use of the premises to be sufficient to establish that the development complies with the limitations and restrictions of the permitted development rights set out at Class O of Part 3 of Schedule 2 of the GPDO. However, the evidence does include an assessment of the history of the site and the manner in which the site has been used. Furthermore, whilst I do not consider the evidence to be persuasive for the reasons that are set out within the appeal decision, a statutory declaration has been provided that purports to address a period of 16 years. Therefore, although the evidence available has led me to conclude that the appeal should

¹ Paragraph: 028 Reference ID: 16-028-20140306

² The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

be dismissed, I do not find that the prospects of the appeal succeeding were so low that the submission of the appeal constitutes unreasonable behaviour.

5. In relation to whether previous reasons for refusal had been addressed, I note that the application that is the subject of the appeal followed the refusal of 2 earlier applications at the site which were not the subject of an appeal. The first application appears to have been substantially different and the appellant indicates that additional information was provided following the refusal of the second application, thereby demonstrating that an attempt was made to address the previous reasons for refusal. In this regard, the planning system allows for an appeal to be submitted and, as the opportunity to appeal appears to have been exercised only after a third application at the site was refused, I do not find that the appellant acted unreasonably in this regard.
6. With respect to the implications of other appeals being dismissed, the evidence before me indicates that there are substantial differences between the site that is the subject of this appeal and the sites that were the subject of those other appeal decisions. Therefore, I do not find that those appeal decisions would have been decisive in an assessment of the effect of noise caused by commercial premises on the living conditions of future occupiers of the appeal site. Accordingly, I do not find that the appellant's involvement in other appeals renders it unreasonable to have submitted an appeal in this case.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Ian Harrison

INSPECTOR