
Costs Decision

Site visit made on 18 August 2020

by A Blicq BSc (Hons) MA CMLI

Decision date: 27 August 2020

Costs application in relation to Appeal Ref: APP/W3710/W/20/3248138 Anker Service Station, Weddington Road, Nuneaton CV10 0AD

- 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 Shaan Chaudry for a full award of costs against Nuneaton and Bedworth Borough Council.
 - The appeal was against the refusal of the Council to grant subject to conditions planning permission for proposed extensions, alterations and change of use from a car wash (Class A1) to food takeaway (Class A3/A5). The proposed first floor over to be used as offices (Class B1 (a)/A2).
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Decision

1. The application for an award of costs is allowed in part.

Reasons

2. Paragraph 030¹ of the *National Planning Practice Guidance* (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 051² of the PPG states that awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.
4. The applicant advances the arguments that the Council prevented development which should clearly be permitted with regard to its development plan and national guidance, failed to substantiate the reasons for refusal and failed to include an expired permission for a similar development in its officer's report which amounts to inconsistent decision making.
5. The Council's decision sets out that the development would be contrary to Policy HS7 of the Local Plan (LP) as there would be overprovision of Class A5 uses in relation to the nearby schools. I have set out in my reasoning why I have concluded that the development would be contrary to this policy.
6. However, my reasoning has relied on the additional provisions set out in the SPD³, cited in LP Policy HS7. The Council notes in its costs response that this document was not adopted when the Council took the decision to refuse the application. The aims of LP Policy HS7 may be to restrict hot food takeaways

¹ Reference ID: 16-030-20140306

² Reference ID: 16-051-20140306

³ Planning for a Healthier Area – Hot Food Takeaways

within easy reach of schools, but I have to base my reasoning on the exact wording of the policy. This clearly states that the restriction on hot food takeaways within 400 metres of a school is permitted in existing local centres. The SPD is not mentioned in the decision notice or the officer's report. Moreover, there is nothing in the officer's report to indicate that there would be overprovision of Class A5 uses within 400 metres of the school, which is the reason for refusal.

7. Moreover, even if the SPD had been adopted, the Council's costs response misinterprets Policy HFT1 of the SPD. This repeats the provision of LP Policy HS7 that the 400 metres restriction does not apply where a hot food takeaway would be within a designated centre.
8. Consequently, the Council's refusal is unsupported by its own policy at the time of determination. As such, I conclude that the arguments for refusal were unsubstantiated. This amounts to unreasonable behaviour leading to wasted expense at appeal.
9. It is apparent that the previous application⁴ is not listed in the planning history. However, it is unclear to me how this omission might have influenced Members when this application was considered at Committee. The officer recommended the application for approval. Members raised concerns in relation to public health, anti-social behaviour, litter and highway safety. I am unaware if these issues were raised when the previous application was considered. Moreover, the current development plan was adopted in 2019 and the planning context has changed since that application was approved. This does not amount to inconsistent decision making.

Conclusion

10. In the light of the above, I conclude that the Council's reasons for refusal were unsubstantiated. This is unreasonable behaviour and has led to the wasted expense of the appeal in respect of the issue of the development's proximity to the school only. Unreasonable behaviour resulting in unnecessary or wasted expense at appeal in respect of inconsistent decision making has not been demonstrated. A partial award of costs is allowed.

Costs Order

11. 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 Nuneaton and Bedworth Council shall pay to Mr Shaan Chaudry, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the appeal with regard to the development's proximity to the school only; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Nuneaton and Bedworth 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.

A Blīcq

INSPECTOR

⁴ Ref: 032023