
Costs Decision

Site visit made on 21 July 2020

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th August 2020

Costs application in relation to Appeal Ref: APP/W3005/W/20/3252577 11-13 Chiltern Mills, Station Road, Sutton in Ashfield NG17 5FF

- 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 Philip MacLauchlan (Toolstation Ltd) for a full award of costs against Ashfield District Council.
 - The appeal was against the refusal of planning permission for change of use from A1-Retail to B8 Storage and Distribution without complying with conditions attached to planning permission Ref V/2019/0337.
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Decision

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

Reasons

2. The 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.
3. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicant submits that the Council has acted unreasonably in that it has failed to justify the requirement for the retention of the conditions in light of the findings of the applicant's noise assessment, which accompanied the planning application. As a result, the Council's decision prevented a development that should have been permitted. Furthermore, the applicant submits that the Council did not work proactively during the application process, thus the appeal could have been avoided, or the issues narrowed.
5. The planning application was accompanied by an independent noise assessment which found that the adjacent hot food takeaway, amongst other things, affected the existing noise climate such that the extended trading and delivery hours at the appeal site would have a minimal impact on the local environment. Whilst I accept that the Council is not bound to provide empirical evidence to counter the applicant's noise report, the Council failed to provide a detailed technical rebuttal of the noise assessment in order to question the veracity of the survey methodology or its findings. Indeed, all the concerns set out by the Council, in terms of the sensitive location of the appeal site within a

predominantly residential area, and the additional activities/comings and goings associated with extended trading and delivery hours, were addressed in the noise assessment, yet the Council did not explain in sufficient detail why they disagreed with the noise assessment in respect of these issues.

6. In my appeal decision, I found that there was no justifiable planning reason to withhold planning permission based on varying the planning conditions in question, nor was there any conflict with national or local planning policy. To my mind, the Council failed to present specific policies or a robust explanation to demonstrate how the proposal would unacceptably harm the living conditions of nearby occupiers.
7. Regardless of whether or not the Council worked in a proactive manner with the applicant, I consider that the Council has acted unreasonably in withholding planning permission which should clearly have been granted and this has resulted in the unnecessary expense of lodging the appeal.

Conclusion

8. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

9. 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 Ashfield District Council shall pay Mr Philip MacLauchlan (Toolstation Ltd), the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Ashfield District 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, such costs to be assessed in the Senior Courts Costs Office if not agreed.

Matthew Woodward

INSPECTOR