



Costs Decision

Site visit made on 6 October 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th October 2020

Costs application in relation to Appeal Ref: APP/V5570/W/20/3248006 234 Holloway Road, London N7 8DA

- 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 Gunay Demir for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the refusal of planning permission for development described as 'change of use from Sandwich Bar (A1 Use) to Cafe / Restaurant (A3 Use) with installation of extraction flue system at the rear. External and internal improvements to be done to the property with a good standard of work'.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.
3. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour include preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
4. Notwithstanding the date on the application form, the applicant has not disputed that the application was not received by the Council until 7 October 2019. The Council has not specifically responded on the length of time taken to request additional information from the applicant who indicates this was not sought until 28 October 2019. However, I do not consider that the delay was excessive, and following receipt of the requested information and registration of the application, it was then determined by the Council within the prescribed period.
5. Although the applicant asserts that the Council has registered other applications proposing A3 uses without a noise assessment, I do not know from the very limited information provided whether these also included installation of extraction equipment, the nature of neighbouring uses, or when they were registered. I do not therefore find that these examples demonstrate that the Council's request for a noise assessment in accordance with local validation requirements to be unreasonable.

6. While the applicant advises that preparation of the application started in August 2019, from the evidence before me I have no reason to find that the Council sought to deliberately hold up or unreasonably delay the progress of the application.
7. I acknowledge the applicant's concerns over the limited engagement with the Council during the application process. However, given the nature of the concerns over the principle of the development being proposed, it is unlikely that further discussion or amendment could have addressed this concern. While amendments to the design could have been sought, the appeal could not therefore have been avoided altogether.
8. I have found that the proposal would conflict with relevant policies of the development plan which seek to maintain the vitality, viability and function of Local Shopping Areas. I have concluded that there are material considerations which outweigh this conflict, but this is on the basis of changes to legislation which post-date the Council's decision and submission of the appeal. My conclusions with regard to the effect of the proposal on the character and appearance of the area differ from the Council's, however this is a matter of planning judgement. The Council's concerns are clearly explained within their evidence with reference to relevant policies of the development plan. I do not therefore find that the Council acted unreasonably in refusing the application.
9. I note the applicant's frustration that the Council did not respond to efforts to discuss the proposal after the decision had been made and comments regarding payments of rent, business rates and loss of income during the period of the application and appeal process. Nevertheless, the PPG notes that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage and that costs unrelated to the appeal are ineligible. The appeal procedure has been delayed as a consequence of the COVID-19 pandemic. However, this does not reflect unreasonable behaviour on the part of the Council.

Conclusion

10. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, for the reasons given above, the application for a full award of costs is refused.

J Bowyer

INSPECTOR