



Costs Decision

Site visit made on 9 December 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2021

Costs application in relation to Appeal Ref: APP/X3025/W/20/3250525 Land at Asda, Old Mill Lane, Forest Town NG19 0HA

- 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 McDonald's Restaurants Limited for a partial or full award of costs against Mansfield District Council.
 - The appeal was against the refusal of planning permission for the erection of a freestanding two storey McDonald's restaurant with drive thru, car parking, landscaping and associated works, including customer order displays (cod) and play area.
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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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application for costs is based on the view that the appeal was unnecessary as the Council's decision was made with a lack of planning grounds to substantiate the reason for refusal, in particular in relation to the development plan.
4. A planning decision is one of a matter of judgment and the Council Members are entitled not to accept the professional advice of their officers so long as a case can be made for a contrary view. The Council's decision was based on the effect of the proposal on public health, in particular that of children and food consumption. The reason is precise, specific and relevant to the planning application, clearly explaining on what grounds the Council considered the proposal not to be acceptable. Public health is a planning consideration. Healthy communities is part of achieving sustainable development under the National Planning Policy Framework (Framework).
5. The Mansfield District Local Plan 2013 - 2033 (2020) was adopted after the Council made its decision. Members would have been aware of the emerging policy concerning hot food takeaways when making their decision, not least as it is set out in the Planning Officer Report. The Council do not dispute that the proposal complies with the relevant Policy RT10. It is not contained within the reason for refusal.

6. Rather the Council's position is that the public health concerns outweigh Policy RT10. In this regard, the statutory presumption in favour of the development plan is not unqualified. A determination shall be made in accordance with the plan unless material considerations indicate otherwise. Whilst I disagree with the Council for the reasons that I have set out in my appeal decision, the Council's position is not without merit. The Council's Appeal Statement sets out its concerns with a satisfactory level of detail. A purpose of such a statement is to amplify the matters which are set out in the reason for refusal and this is adequately achieved.
7. The applicant is of the view that the evidence base which the Council refers to has already been used in the preparation of Policy RT10, and that the Council did not then amend the policy prior to adoption. Whilst this may be the case, public health, including obesity and other health conditions, remains a concern in the Council area. It is not unreasonable for the Council to place significant weight on this matter and this approach is not without evidence.
8. The applicant also considers that the Council has been unreasonable in applying paragraph 92 of the Framework. Paragraph 92 does not define what it means by social, recreational and cultural facilities and services. However, it does refer to taking into account and supporting the delivery of local strategies to improve health, social and cultural well-being for all sections of the community. It is not without relevance to the consideration of the proposal.
9. The applicant has also raised matters with regard to the conduct of the Planning Committee. These are not for me to comment on, beyond what I can have regard to under the PPG and which is the basis for considering claims for costs, and which I have done so above.
10. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of partial or full costs is not, therefore, justified.

Darren Hendley

INSPECTOR