The Planning Inspectorate

Costs Decision

Site visit made on 8 December 2020

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15th January 2021

Costs application in relation to Appeal Ref: APP/H2265/W/20/3257861
The Oast House, Hollow Lane, Snodland ME6 5LB

- 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 David Catterall on behalf of Zenacrown Limited for a full award of costs against Tonbridge & Malling Borough Council.
- The appeal was against the refusal of planning permission described as: *'Partial demolition of existing vacant building, change of use of remaining floorspace and erection of new single storey extension for mixed restaurant and hot food takeaway (mixed A3/A5) use, incorporating a 'drive-thru' lane, creation of new vehicular access and egress point from Hollow Lane, provision of car and cycle parking, plant and extraction system, landscaping and both freestanding and elevational internally illuminated and non-illuminated signage.'*

Decision

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

Reasons

2. The national Planning Practice Guidance (the Guidance) indicates that costs may only be awarded when a party has behaved unreasonably and that this behaviour has caused the other party to incur unnecessary or wasted expense in the appeal process.

3. In summary, the Applicant considers that the unreasonable behaviour in this instance falls under Paragraph 49 of the Guidance in that the local planning authority prevented or delayed development which should clearly be permitted, a failure to produce evidence to substantiate each reason for refusal and vague, generalised or inaccurate assertions about the proposal's impacts, which are unsupported by any objective analysis.

4. To the contrary, the Council considers that their behaviour is covered by Paragraph 50 of the Guidance which indicates that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable to an award of costs.

5. It appears clear that the Council had concerns over the potential noise and disturbance arising from the proposal. This resulted in a degree of to-ing and fro-ing between various committee meetings whereby the Applicant sought to address those concerns through the undertaking and submission of various reports.

6. As a result of this activity, various technical reports were produced by the Applicant's expert advisers which, put simply, indicates that the proposal would not result in a degree of harm that could not be mitigated or that such mitigation measures could not be secured by means of planning conditions. There is little substantive evidence that the Council's own expert advisers disagreed with the methodology, content, or recommendation of those studies undertaken at the Council's request.

7. Indeed, whilst I note the reason for refusal, there appears to be very little objective analysis by the local planning authority as to why the proposal would result in a materially harmful level of noise or disturbance.

8. Whilst it is, of course, open to the Council's planning committee to come to a different view of their planning and other regulatory regime experts, this needs to be on a sound and reasonable planning basis. In this case, in light of the not insignificant and not disputed technical information submitted by the Applicant as requested by the Council, there appears to be little reason for permission to have been refused. Indeed, the recommendation of those reports does not indicate permission should be refused and there is very little contrary evidence produced by the local planning authority that indicates that that information from the Applicant should not be taken at face value.

9. In only providing vague, generalised or inaccurate assertions about the impact of the proposal, I find that the local planning authority have acted in an unreasonable manner. Moreover, in the absence of such objective analysis it is likely that a planning appeal could have been avoided.

10. In such circumstances I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs relating to the appeal process, and all matters therein, is justified.

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 Tonbridge & Malling Borough Council shall pay to Zenacrown Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Tonbridge & Malling Borough Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Cullum J A Parker

INSPECTOR