



Costs Decision

Site visit made on 16 February 2021

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2021

Costs application in relation to Appeal Ref: APP/Z4718/W/20/3263244 Devour at Woodlands Mill, Luke Lane, Thongsbridge, Holmfirth HD9 7TB

- 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 Paul Robinson (D & LS Developments Ltd) for a full award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the grant subject to conditions of planning permission for *variation of condition 2 (plans) and 15 (opening hours) on previous permission 2018/90876 for the variation of conditions 2 (plans) and 15 (opening hours) on previous permission 2017/91888 for change of use, alterations and extensions to former mill buildings to form mixed use development comprising of food manufacturing, cookery school, café, shop, restaurant, cooking demonstration / tasting areas, service yard, parking and associated landscaping works.*
-

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Applications for an award of costs may be made on procedural or substantive grounds. The Guidance is clear in setting out the circumstances in which a Council could be vulnerable to an award of costs against it.
3. The appellant submits that the Council acted unreasonably in refusing the application against the advice of its professional officers without good reason. The Guidance makes it clear that a local planning authority is at risk of an award of costs against it if it fails to produce evidence to substantiate each reason for refusal (or, as in this case, the imposition of the disputed condition) on appeal, or makes vague, generalised or inaccurate assertions about a proposal's impact.
4. Whilst the Council is not duty bound to follow the advice of its officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. As will be seen from my decision, I agree that there were sufficient grounds for approving the application subject to the disputed condition. The hours set out in the disputed condition were not what the appellant sought but were consistent with those imposed on the 'parent' and previous applications.

5. Notwithstanding the officer recommendation and the absence of objection from internal consultees, it is clear that there were also interested parties who are, have been, and may continue to be, affected by the implications of the extended operating times. On the evidence available, the Council reached a balanced judgement which has been clearly set out against development plan policies in the subsequent appeal submissions. I concur with the Council that it has not been adequately and robustly demonstrated that the proposed extended hours in to the later evening would not cause material harm to the living conditions of occupiers of nearby properties.
6. It is clear to me for the reasons set out above and in my decision that the Council did not act unreasonably in reaching the conclusion that they did in re-imposing the hours set out in the disputed condition. As such, there can be no question that the applicant has been put to unnecessary or wasted expense.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. The application for an award of costs is refused.

Graeme Robbie

INSPECTOR