
Costs Decision

Site visit made on 13 April 2021

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 10 May 2021

**Costs application in relation to Appeal Ref: APP/P3040/W/20/3262617
173 Loughborough Road, West Bridgford, Nottingham NG2 7JS**

- 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 Fazilat Foundation UK for a full award of costs against Rushcliffe Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the Change of Use from Dental Surgery (Use Class D1) to a Place of Worship (Use Class D1).
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs irrespective of the outcome of the appeal.
3. The basis of the appellant's application for costs is firstly on the grounds that the Council acted unreasonably by seeking to impose a condition identified on the Officer's recommendation report to approve planning permission with a restriction relating to the hours of use. Secondly, that a Council Ward Member refused to remove their objection to the proposal against an alleged background of statutory consultees removing their objection.
4. The Officer's report identified that the reason for the suggested condition was to safeguard the amenities of neighbouring/nearby properties. Given the nature of the intended use, with prayers occurring at sunrise and sunset, and the proximity of adjacent residential properties, I do not find that the Council's approach to consider a restriction on the hours of use to be unreasonable. Although I found differently to the Council on this matter, it does not mean that its concerns had no basis.
5. In my view, the Council properly considered the amenity of nearby/neighbouring residents within the context of Policy 10(2)(b) of the Rushcliffe Local Plan Part 1: Core Strategy and Policy 1(1) of the Rushcliffe Local Plan Part 2: Land and Planning Policies. Notwithstanding the suggested condition, the Council resolved that it would have refused planning permission

- for the proposed use with one of the reasons for the refusal of planning permission relating to noise and disturbance.
6. Although a condition restricting the hours of use was proposed by Officer's to mitigate the impact of noise and disturbance, the Members of Planning Committee had a differing view of the effect of the proposed development on the living conditions of nearby/neighbouring residents than the Planning Officers. Irrespective of the suggested condition, the resultant decision that the Council would have refused planning permission on the grounds of noise and disturbance was both relevant to the application and relevant to the policies of the development plan that the proposal would be in conflict with.
 7. Notwithstanding the Council's decision on the planning application, had it been in a position to formally determine it, the disputed condition was a recommendation that was not accepted by Members of Planning Committee. I consider that the Officer had reasonable concerns regarding the effect of the intended use on living conditions to justify the suggested condition and that Members of Planning Committee were quite entitled to take it into account and come to a different view in their consideration of the application. These actions do not constitute unreasonable behaviour.
 8. Turning to the appellant's second point, a local Ward Councillor is quite entitled to exercise judgement and maintain objections where they have a legitimate basis. The fact that a Councillor may have a different view to Officers, statutory consultees and the appellant does not in itself constitute unreasonable behaviour. Furthermore, the views of one Councillor does not imply that members of Planning Committee were influenced by this view in their decision that planning permission would have been refused.
 9. Accordingly, I do not find that the Council failed to properly evaluate the application or failed to properly consider the merits of the scheme. Furthermore, I have no evidence to suggest that the views of a local Ward Councillor unduly influenced the decision of Planning Committee that planning permission would have been refused.
 10. The suggested reasons for the refusal of planning permission were adequately stated by reference to the appropriate policies contained in the development plan that the proposal was in conflict with. I have found that the Council had reasonable concerns about the harm to the living conditions of nearby/neighbouring residents and highway safety which justified its decision. The suggested condition and the views of a local Ward Councillor regarding the planning merits of the proposal do not constitute unreasonable behaviour.
 11. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified.

Stephen Normington

INSPECTOR