

Costs Decision

Site visit made on 21 April 2021

by C J Leigh BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2021.

**Costs application in relation to Appeal Ref: APP/A2280/W/20/3262858
Hempstead Valley Shopping Centre, Hempstead Valley Drive, Hempstead,
Gillingham, ME7 3PD**

- 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 was made by BAPT Ltd for a full award of costs against Medway Council.
 - The appeal was against the refusal of planning permission for the erection of a drive-thru restaurant, reconfiguration of car park and closure of multi-storey car park exit ramp.
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Decision

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

Reasons

2. The Planning Practice Guidance: Appeals (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 made on a substantive basis and states that the Council's refusal on the matters of design and impact on highways were based on a subjective judgement with no realistic or specific evidence to support their case. The applicants further consider the refusal on the basis of littering to be a matter that duplicates other statutory provision and was inconsistent with other decisions taken by the Council.
 4. The Council's response is that their refusal of permission, which was taken by Members of the Planning Committee contrary to the recommendation of Planning Officers, was the judgement of those Members based on their reasoning and their knowledge of the site and area.
 5. The PPG states (paragraph 049) that a possible ground for unreasonable behaviour may be where a local planning authority makes vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. It is further stated that they must determine similar cases in a consistent manner.
 6. With regards to the matter of design and the effect on character and appearance, I accept that this is a matter of judgement. The Members of the Committee were recommended to accept the design and location of the
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- proposed building, but their judgement was the development would be unsuitable and harmful. Their case was adequately expressed in Minutes of the Committee Meeting and the Council's submission at the appeal. Character and appearance was the first main issue in my decision and my assessment of the case led to a different judgement and approval on this issue, but that does not in itself make the Council's submissions vague, generalised or inaccurate.
7. I come to a different finding on the other matters. The second main issue in my decision was effect on highway safety. The application to the Council was accompanied by a comprehensive Transport Statement and the Committee Report refers to additional work on highways and transport matters undertaken during the course of the application. The Committee Report was a thorough and cogent discussion of the highways issue and reported no objection to the scheme from the Highways Authority.
 8. The Council's first reason for refusal cited harm to highway safety and the freeflow of traffic, with reference to the relevant policy of the development plan. The appellants submitted evidence on these matters with the lodging of the appeal, which I consider an understandable response. The Council's appeal submissions provided very little elucidation of the Committee's concerns regarding highway safety and the freeflow of traffic, nor did the Committee Minutes. The evidence therefore pointed to there being no reason to deviate from the original conclusion of the Committee Report that there was no sustainable objection on highway safety grounds; thus the Council's position on this matter was vague, with generalised assertions about the proposal's impact, and which were unsupported by any objective analysis. That was unreasonable behaviour that led to additional expense for the appellants in producing evidence on the second main issue.
 9. The Decision Notice set out a second reason for refusal that raised issues regarding off-site littering, and this formed part of my third main issue. I found in my decision that assertion to be vague and generalised. The appellants also drew my attention to a recent approval for a takeaway facility in the Borough where no such objection was raised, and thus I consider the Council did not determine cases in a consistent manner. This was unreasonable behaviour on the third main issue. Although there was limited additional evidence produced on this issue, it is apparent to me that the appellants would have had some additional time to address the matter and hence additional expense.
 10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and this unreasonable behaviour has directly caused BAPT Ltd to incur unnecessary expense in the appeal process and that a partial award of costs 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 Medway Council shall pay BAPT Ltd 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 Medway Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount

C J Leigh

INSPECTOR