



Costs Decision

Site visit made on 24 November 2021

by Elizabeth Lawrence BTP MRTPI

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

Decision date: 20th December 2021

Costs application in relation to Appeal Ref: APP/L2250/W/21/3275546 Tesco Car Park, Cheriton High Street, Folkstone, CT19 4QJ

- 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 Ltd for a full award of costs against Folkestone & Hythe District Council.
 - The appeal was against the refusal of planning permission for a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD), goal post high restrictor and play frame. Relocation of the existing recycling area, click and collect and trolley bays.
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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 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. Examples of potentially unreasonable behaviour by a local authority include preventing or delaying development which should clearly be permitted; failing to produce evidence to substantiate reasons for refusal; and making vague, generalised or inaccurate assertions about a proposals impact, which are unsupported by objective analysis.
3. Planning committees do have to take into account any valid planning concerns raised by local residents and are not bound to accept the advice and recommendations of their officers. However, their assertions do need to be based on objective analysis and at appeal councils need to produce evidence to substantiate each reason for refusal.
4. The Planning committee refused the planning application against their officer's recommendation and the advice of professional consultees relating to the impact of the proposal resulting from additional lighting, vehicle movements and hours of operation. As a consequence, the Council considered the proposal to be contrary to policies HB1 & RL8 of the Places and Policies Local Plan and paragraph 127 (f) of the National Planning Policy Framework. Whilst highway safety and sustainability were also included in the reasons for refusal, before the appeal was lodged the council confirmed that it would not be contesting these issues, or presenting evidence in relation to air quality, or climate change.

5. Noise, disturbance and fumes are not specifically referred to in the Council's reasons for refusal, although they are factors typically associated with the effect that vehicle movements and hours of operation can have on the living conditions of local residents. Hence, whilst the reason for refusal could have been clearer, I do not find it to be misleading or unacceptable.
6. Whilst the Council does refer to highway matters in its statement, they relate to their impact on the living conditions of local residents. The Council's statement clearly states that the appeal proposal would not prejudice highway safety or amenity, but would cause harm to residential amenity.
7. The appellant company submitted an Acoustic Assessment with the application. It concluded that the sources of noise associated with the drive-thru and restaurant, including accessing the site, revving engines, customers ordering through the intercom system, associated plant and slamming doors would comply with the World Health Organisations (WHO) guidelines, both during the day and at night. Also, that the noise from the plant would be imperceptible and could be conditioned.
8. Notwithstanding this, in their appeal statement the Council asserts that the noise and associated disturbance likely to be generated by these same activities during the evening and overnight would be more prominent and noticeable than at present and therefore more intrusive and harmful for local residents. Little evidence was submitted to support this assertion. There was a lack of objective analysis and some reliance was placed on an appeal decision where a formal acoustic assessment was not available to the Inspector. In this respect I find that the Council behaved unreasonably, resulting in unnecessary and wasted expense for the appellant company.
9. In their letter dated 19 February 2021 the Council clearly states that it would not be presenting evidence on air quality and / or climate change. It was therefore unreasonable of the Council to refer to traffic fumes in its statement. Notwithstanding this the Council did not provide any evidence on this matter for the appellants to address. Notwithstanding this, as it was a matter that had been referred to by local residents, I needed to address it in my decision. Accordingly, whilst this amounted to unreasonable behaviour by the Council it did not result in the need for the appellant to submit additional evidence.
10. An outdoor lighting scheme was submitted with the planning application, although no formal lighting assessment was included. In view of the proximity of the dwellings along Samian Crescent, I consider that the concerns of the Council regarding light pollution were not unreasonable. I found that the subsequent formal lighting assessment submitted with the appellants statement of case fully, objectively and satisfactorily addressed this concern.
11. The Council referred to the appellants lighting assessment and advised that the visibility of the lighting within the site was the source of their concern. Whilst I found in favour of the appellant on this point, I consider that the evidence provided by the Council, in this respect, was objective and sufficient to substantiate their concerns. Conversely, I do not consider that it was reasonable for the Council to then refer to the impact of any possible illuminated signage. As this was readily and simply addressed by the appellants it did not result in the need to prepare any unnecessary additional evidence.

12. 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 partial ward of costs is justified.

Costs Order

13. 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 Folkestone & Hythe District Council shall pay to McDonald's Restaurants Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to addressing noise and associated disturbance; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Folkestone & Hythe District 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.

Elizabeth Lawrence

INSPECTOR