



Costs Decision

Site visit made on 6 January 2022

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2022

Costs application in relation to Appeal Ref: APP/H2265/W/21/3279375 Units 1B and 1C, Tonbridge Retail Park, Cannon Lane, Tonbridge TN9 1PN

- 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 LondonMetric Saturn Limited for a full award of costs against Tonbridge and Malling Borough Council.
 - The appeal was against the refusal of an application that sought to extend the range of the goods that can be sold from Units 1B and 1C by varying a condition attached to planning permission TM/16/00818/FL, dated 1 November 2016.
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Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) states that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has caused another party to incur unnecessary or wasted expenditure in the appeals process. Unreasonable behaviour may be procedural, relating to the process, or substantive, relating to issues arising from the merits of the appeal. In this case the appellant submits that the refusal amounted to substantive unreasonable behaviour.
3. As noted in my appeal decision, the main issue was the effect that varying the condition would have on the highway network. Kent County Council, the highway authority, had advised that there were no sustainable highways grounds for objection. This was reflected in the officer's report to the planning committee which recommended that the proposal should be approved. However, the committee was not bound to follow that recommendation. It determined that the application should be refused.
4. I consider that the committee had genuine concerns about the effect of a new food store on congestion in Cannon Lane. Following the committee's decision, the Council commissioned a further independent assessment from C&A Consulting Engineers. The C&A report commented that the trip rates that had been used in the transport assessment (TA) had, in effect, been borrowed from earlier assessments. C&A considered that the correct approach would have been to carry out the assessment by making a fresh interrogation of the TRICS database. Having done that exercise, C&A advised that the trip rates associated with a new food store would be significantly higher than those used in the TA.

5. The TRICS database is widely used by those engaged in assessments of this sort. The way this data is used requires the exercise of professional judgment, for example in relation to the comparability of one site to another. In my appeal decision, I have given my reasons for preferring the evidence of the appellant. Nevertheless, these are matters where qualified and experienced assessors may come to different judgments. I consider that the Council had an arguable case that the trip generation rates could have been significantly higher.
6. There were practical difficulties in establishing the baseline conditions at the time of the application because travel patterns had been disrupted by the pandemic. Consequently, it was not possible to carry out a representative survey. Of necessity, reliance was placed on traffic projections from earlier assessments. The appellant did carry out a survey in June 2021 and I have taken account of that survey in reaching my decision. This information, which may have assisted the Council, was not available at the time of its decision.
7. The appellant argues that the Council's reason for refusal does not actually contain any allegation of harm in relation to the highway network. That is a fair point to make. I agree that the Council's reason for refusal was founded on what it saw as an unacceptable risk of harm rather than a direct allegation that harm would arise. However, I consider that was a reasonable exercise of planning judgment.
8. I note that the officers' report included reference to the section of the National Planning Policy Framework which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. I see no reason to think that members failed to understand and/or take account of this approach.
9. I conclude that unreasonable behaviour has not been demonstrated and that the application for costs should not be granted.

David Prentis

Inspector