
Costs Decision

Site visit made on 29 June 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 July 2022

Costs application in relation to APP/L2250/W/21/3284932

TCM House, Trinity Road, Folkestone CT20 2HB

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mike Harry for a full award of costs against Folkestone and Hythe District Council.
 - The appeal was against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for development described as the conversion of the application site from Class B1(a) office use to create 27 new C3 residential units with parking for 49 cars (inclusive of 9 disabled parking spaces and 4 electrical charge point parking spaces) and secure, sheltered storage for 72 cycles.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the 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. Unreasonable behaviour can be considered as either substantive or procedural in nature.
3. The applicant considers that the Council behaved unreasonably because the Council misinterpreted the law and thereby misdirected itself into wrongly refusing an otherwise acceptable application. This, in the applicant's opinion, has caused the unreasonable cost of making an appeal.
4. From the evidence before me, which includes a legal opinion from a Queen's Counsel barrister, there appears to be no case law or definitive explanation in respect to the matter of when a Class O prior approval application is judged to have been applied for.
5. As set out in evidence, the Act uses terms such as 'apply' 'received' and 'made'. These differing terms create a somewhat uncertain context to reach a conclusion on time limits. Therefore, in coming to my conclusion, in respect to the separate appeal decision, I have exercised judgment and reasoning on the evidence before me. While my findings are contrary to the Council's, I find the Council's position in respect of the appeal was a matter of judgement and was fairly reasoned and substantiated.

6. I am also mindful that the PPG states that awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.

Conclusion

7. I therefore find, in this case, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is not therefore justified.

N Praine

INSPECTOR