



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 Folkestone and Hythe District Council for a full award of costs against Mike Harry.
 - 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 Council considers that the applicant behaved unreasonably by lodging an appeal particularly as the Council considers the law is clear on this matter. They explain that they presented full and detailed evidence to support their case and the reason for refusal stands up to scrutiny. As such, the Council considers that the lodging of an appeal amounts to unreasonable behaviour especially when they held an ongoing dialogue during the determination process to clearly outline the regulations on the submission of applications.
4. The Council also considers that this appeal is not necessary, and an alternative route exists through Class MA of the General Permitted Development Order (GPDO) which has been advised to the appellant. However, the appellant proceeded with the submission of an unnecessary appeal. The Council therefore considers that an appeal and the expense in defending it could have been avoided.
5. As I have found 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 when a Class O prior approval application is judged to have been applied for.

6. 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. On this basis the appellant was entitled to make an appeal to seek clarity. I do not consider this to be unreasonable behaviour.
7. There is limited evidence before me that alternative routes through the GPDO such as Class MA would be successful. I note that the appellant also expresses reservations in this regard. On this basis I have not been convinced that viable alternative options were readily available to the appellant to avoid making an appeal.

Conclusion

8. 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