

Costs Decision

Site visit made on 13 September 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th October 2022

Appeal Ref: APP/J0405/W/22/3291750

19 Bridge Street, Buckingham MK18 1AF

- 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 Mr & Mrs Godhania, for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for the change of use of a dwellinghouse (ground floor only) (Class C3) to hot food takeaway unit (Class A5/sui generis) and drycleaners unit (Class A1/E) including the installation of one (1) oven air extract, terminating via a chimney flue at the side northern elevation of the building and a number of other external alterations.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may only 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 applicants' application for costs is on the basis that the Council has acted unreasonably by:
 - failing to consider the existing noise, in particular traffic noise, and the hours of operation of existing businesses in the vicinity of the appeal site, and failure to give appropriate weight to the comments made by the Environmental Health Officer;
 - failure to accept the advice of the Highway Authority with respect to visibility requirements;
 - failure to consider all of the relevant planning documents, including the appellants noise and fume report, and erroneously stating that no pre-application advice was obtained; and
 - taking an excessive period of time to make a decision.
4. From what I have read, it would appear that the Council took into account the applicants Noise Impact Assessment Report – Kitchen Extraction System & Sound Insulation Analysis (the 'noise report'). In particular I note that

reference was made to it by the Environmental Health Officers in their consultation responses of 16 March 2021 and 28 April 2021. That said, I also note that the noise report was prepared at a time when there were Government restrictions on movement. As a consequence, the applicant was reliant on an earlier noise survey carried out relative to a nearby site (2 Bridge Street, MK18) to establish background noise levels. Moreover, it's focus was on the kitchen extraction system, the need for sound insulation between the proposed commercial and residential parts of the appeal premises and the impact of the kitchen extract system on adjoining properties.

5. From what I have read it is readily apparent that consideration was given, by the Council's Planning Officer, to the Environmental Health Officer's comments. However, in the absence of site specific evidence relating to external activity, I find it reasonable for the Council's planning officer to form a view as to whether the proposal would cause harm to the living conditions of neighbouring occupiers.
6. Furthermore, whilst acknowledging that reference was made, in the Appellant's statement of case, to traffic noise, and the hours of operation of existing businesses in the vicinity of the appeal site, these were not matters before the Council at the time they considered the application. As a result, I consider that the applicant's time and expense in defending the appeal were a necessary part of the process.
7. I note that the Highway Authority had no objection to the proposal in principle subject to satisfactory visibility splays being provided. In the Officer's report it is made clear that the provision of the required visibility splays may affect third party land. Whilst evidence has subsequently been submitted with the appeal to demonstrate that the required visibility can be achieved without affecting third party land, this was not the case at the time when the application was determined. Consequently, I consider that the applicant's time and expense in defending the appeal, in this regard, were a necessary part of the process.
8. The Officer's report makes specific reference to the Ventilation Extract Statement (February 2021) in its list of plans and documents. Whilst I acknowledge the Noise Impact Assessment Report is not specifically referenced in the list, it is apparent that full consideration was given to matters relating to noise and odours prior to making the decision.
9. I also note the reference, in the Officer's report, which states that 'the applicant did not use the pre application process'. In this regards it is clear to me that pre-application advice was sought by the applicant and given by the Council. Furthermore, from my reading of the advice provided, it is evident that the Council had strong concerns about the proposal. These concerns were further elaborated on in the Officer's report. Therefore, I find that a full and thorough assessment of the proposal was undertaken, and a justifiable conclusion reached on the proposal. Therefore, I find that the applicant's time and expense in defending the appeal were a necessary part of the process.
10. Planning Practice Guidance indicates that, if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In this case the planning application is dated 11 February 2021 and, according to the decision notice, was

validated by the Council on 22 February 2021. Based on the evidence before me comments from interested parties, including consultees, were received during March, albeit further comments were received from the Highway Authority and the Environmental Health Officer on 7 April and 28 April 2021 respectively. The refusal notice was issued on 10 January 2022. Accordingly, the expected determination period of eight weeks was exceeded by a considerable period of time. I am not aware of any agreement to extend the period for determination, or any communication between the main parties which might have expedited the determination of the application.

11. The Council assert that the delay was due to a high number of staff vacancies and a 'significant' increase in the number of applications. There is however no further detail provided on this, nor any indication that the applicant was made aware of this at the time of the planning application. That of itself is not a good reason for there being such a lengthy delay in determining an application concerning a not particularly complex proposal. I can appreciate that the delay the applicant encountered would have been frustrating.
12. I also appreciate that resource pressures can cause delays in delivering timely decisions. That said, it is incumbent on the Council, as the local planning authority, to fulfil its planning function without unreasonable delay. Where delays are unavoidable these should be explained clearly to the applicant and engagement, even at the basic level, should continue to take place to meet the requirements of paragraph 38 of the National Planning Policy Framework.
13. I accept that the applicant could have appealed against non-determination of the application at any time after the initial 8 week period. However, based on the evidence before me, even if an appeal against non-determination was lodged, it is likely that the Council would have indicated their opposition to the proposal, due to their underlying concern about the proposals impact on the living conditions of neighbouring properties, and for highway safety reasons. Consequently, the applicant would have been required to incur the costs associated with the making of an appeal in any event.
14. Given my findings above I consider that the applicant's time and expense in defending the appeal were a necessary part of the process. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated.

Decision

15. I have considered all the submitted evidence and conclude that the application for an award of costs should be refused.

John Gunn

INSPECTOR