



Costs Decision

Site visit made on 7 December 2022

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Costs application in relation to Appeal Ref: APP/G5180/W/22/3296136 Unit 1, Springvale Retail Park, Sevenoaks Way, Orpington BR5 3SG

- 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 Aldi Stores Ltd for an award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of the Council to grant planning permission for the creation of a new unit within the existing unit and change of use to sui generis 'hot food takeaway / restaurant' use.
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Decision

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

Reasons

2. The applicant has not stated whether it seeks a full or partial award of costs against the Council. On the basis of the information before me I have considered the application as one for a partial award, but my decision and reasoning would be the same if a full award was sought.
3. The Planning Practice Guidance ("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.

The appellant's case:

4. The applicant's case is threefold.
5. That by the Council stating that, "*It has not been adequately demonstrated and evidenced that there is a genuine locational need for the proposed use ...*"¹, the Council required a need assessment for which there is no policy requirement.
6. That despite requests for copies of statutory consultee responses, the appellant did not receive a list of available sites known to the Council before determination of the application. And as a consequence, that it was necessary for the applicant to respond as part of the appeal process. The applicant considers this was contrary to PPG, which states that, "*wherever possible, the local planning authority is expected to support the applicant in undertaking the sequential test, including sharing any relevant information.*"²

¹ paragraph 7.1 of the Council's Statement of Case

² PPG paragraph 2b-011-20190722

7. That the applicant considers that by the Council stating that, "*the proposed town centre use in an out of centre location would harm the vitality and viability of Orpington Town Centre*"³ the appellant was required to undertake an impact assessment, for which there was no policy requirement.
8. As a consequence, the appellant considers that additional resources have therefore been expended in researching sites the Council included in its delegated report, including sites which are not sequentially preferable to the application site, do not meet its operational requirements, and may not be suitable where they would require planning permission for the use.

Evaluation:

9. The PPG⁴ advises that robust justification needs to be provided where certain main town centre uses have particular market and locational requirements, which mean that they may only be accommodated in specific locations. It was therefore not unreasonable for the Council to question the applicant's justification for its locational requirement, and in my appeal decision I found in favour of the Council on this point, having considered the arguments. I have not seen any evidence that the Council went further than seeking such justification, or that it questioned the need for the development.
10. The correspondence before me demonstrates that the Council engaged with the applicant in relation to the sequential test, even if it did not make all its internal correspondence available prior to making its decision. It also advised the applicant to identify any other units within the town centre, edge-of-centre, or out-of-centre, that would provide a suitable alternative for this proposed unit. The applicant has also been clear that, on the basis of its locational requirement, it does not believe the sequential site assessment should consider Orpington Town Centre or Petts Wood District Centre. Although it would have been helpful for the Council to have provided its list of available sites, the appellant had the opportunity to consider town centre and edge-of-centre sites as part of the application, but did not do so. Consequently, the Council was not unreasonable in its liaison with the appellant in relation to the sequential test.
11. Paragraph 91 of the National Planning Policy Framework states that applications should be refused where (either) an application fails the Sequential Test or is likely to have a significant adverse impact on certain considerations, which apply to the Impact Test. The Council did not require an Impact Test, and neither did it state that the development would have a *significant adverse impact* on the town centre. It was not unreasonable for the Council to find that the development failed the sequential test, and therefore had an adverse impact on the vitality and viability of the town centre, even if not a significant one.

Conclusion

12. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Peter White

INSPECTOR

³ paragraph 7.1 of the Council's Statement of Case

⁴ Paragraph: 012 Reference ID: 2b-012-20190722