



Costs Decision

Site visit made on 10 January 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Costs application in relation to Appeal Ref: APP/B2355/W/22/3306724 Ground and First Floor Rear of 38-42 Market Street, Edenfield BL0 0JN

- 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 Colin Davies for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the variation of condition No 2 of planning permission Ref 2022/0231 to extend the hours that the outside seating area is open to customers.
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Decision

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

Reasons

2. The Planning Practice Guidance 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.
3. The appellant's application for costs is on the basis that the Council has acted unreasonably by refusing a second application identical to the first but for the inclusion of a Noise Impact Assessment (NIA). The appellant states that the NIA was specifically provided in response to the report to Committee on the first application. The report indicated that in the absence of such an assessment there was no evidence to disprove the concerns of the Council's Environmental Health Department about the impact of the proposed extension of hours for the use of the outside seating area on the living conditions of surrounding residents
4. It is clear to me that, in determining the case, the Council gave adequate consideration to the NIA. There is nothing before me that suggests that they disagreed with the method of assessment set out in the NIA or the conclusions that it reached. The Council's concern was whether the mitigation measures recommended by the NIA to reduce the identified increase in noise level arising from the proposal, and thereby address impact to an acceptable level, could be secured.
5. It will be seen from my decision that I have agreed with the Council that a condition to limit the number of customers using the outdoor seating area could not be secured, as such a condition would not meet the relevant conditions tests set out at paragraph 56 of the National Planning Policy Framework. Therefore, the mitigation measures that the NIA recommended

were necessary to reduce the impact of the proposal to an acceptable level could not be secured.

6. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. Accordingly, there can be no question that the appellant was put to unnecessary or wasted expense.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has not been demonstrated.

Elaine Moulton

INSPECTOR