



Costs Decision

Site visit made on 7 March 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2023

Costs application in relation to Appeal Ref: APP/M2270/W/22/3293117 46a High Street, Tunbridge Wells TN1 1XF

- 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 Majid Djavadizadeh for a full award of costs against Tunbridge Wells Borough Council.
The appeal was against the refusal to grant approval required by Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for a Notification of Prior Approval for change of use of the 2nd floor of the building from offices carrying out any operational or business functions (Class E(g)(ii)) to 1 no: 2 bedroom flat (Class C3) with no external alterations to building elevations.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. PPG indicates that local planning authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal. It can be seen from my decision I agree with the Council that there were sufficient grounds for refusing prior approval on matters relating to the impacts of noise from the existing commercial premises on the intended occupiers of the development. The Council's reasons and assessment are sufficiently clear in this case and identify harm. I am satisfied that the Council has shown that it was able to substantiate its reasons for refusal. Consequently, I cannot agree that the Council has acted unreasonably in this case, and I do not consider that the appeal could have been avoided or that the applicant incurred unnecessary or wasted expense in the appeal process.
4. PPG also indicates that a lack of co-operation with the other party can constitute unreasonable behaviour that may result in an award of costs. The applicant contends that he approached the Environmental Protection Team several months prior to submission to discuss the noise issues, the suggestion being that areas of concern to the Council could have been resolved through discussion between the parties. The Council confirms that the applicant benefitted from the Environmental Protection Team pre-application service which is a free and informal service. It is understood that advice was provided

via a meeting and subsequent telephone conversations. Informal advice before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all relevant factors. In this case these factors included an assessment of the Noise report provided with the application. I have little to suggest that the Council failed to cooperate at the pre-application stage. I find no unreasonable behaviour in this regard.

5. The applicant also suggests that a lack of communication during the application process prevented the noise issues from being resolved. However, I have some sympathy with the Council's position that, as the application would have received 'deemed consent' if the time period for a determination to be issued had expired, there was limited flexibility or time for negotiation. Notwithstanding this, as there was a fundamental disagreement between the parties as to the acceptability of the appellant's Noise Assessment and proposed mitigation, it seems to me, unlikely that the reason for refusal would have been overcome through discussion during the application period.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

B Pattison

INSPECTOR