



Costs Decision

Site visit made on 27 June 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th August 2023

Costs application in relation to Appeal Ref: APP/Z3635/W/22/3311716 192 Feltham Hill Road, Ashford, Surrey TW15 1LJ

- 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 Alex Hooper of AJs Coffee House for a full award of costs against Spelthorne Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a wooden canopy to the front of the coffee shop to allow for sheltered seating and planning application for the installation of new extraction fan unit.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) confirms that an award of costs is an order which states that one party shall pay to another party the costs, which may be in full or in part, incurred by the receiving party during the process by which the Inspector's decision is reached. The costs which can be claimed relate only to those costs incurred during the appeal process.
3. The PPG goes on to advise that, irrespective of the outcome of the appeal, all parties are expected to behave reasonably to support the appeal process and costs may only be awarded against a party who has behaved unreasonably and, that the unreasonable behaviour has directly caused the party applying for costs to incur unnecessary and wasted expense in the appeal process.
4. Costs cannot be claimed for the period prior to, or during, the determination of the planning application. However, behaviour and actions at the time of the planning application can be taken into account in consideration of whether costs should be awarded.
5. Paragraph 047 of the PPG¹ indicates that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal and will be at risk of a procedural award being made against them for reasons including a lack of co-operation with the other party.
6. Paragraph 049 of the PPG² indicates that local planning authorities will be at risk of a substantive award being made against them for, amongst other things, preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and

¹ Paragraph: 047 Reference ID: 16-047-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

any other material considerations, refusing planning permission on a planning ground capable of being dealt with by conditions, not determining similar cases in a consistent manner and refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues being narrowed, thus reducing the expense associated with the appeal.

7. The applicant has not provided a detailed costs claim but, within their evidence, has referred to lack of co-operation and communication with the Council which has resulted in significant delays; other businesses with extraction equipment having been approved; and that the Council could have approved the proposal with a condition to require additional screening.
8. The applicant's case on the procedural ground is primarily based on the length of time between the refusal of a previous planning application and the refusal of the second application. The applicant also refers to lack of communication with the Council and a lack of a site visit by the Planning Officer. This is also part of the applicant's case on substantive grounds in that the Council did not enter into pre-application discussions or provide reasonably requested information.
9. From the evidence before me, including the Stage 1 and Stage 2 complaint responses, although the applicant did not request formal pre-application advice, the Council did not communicate as well as they could have, and this resulted in some degree of unreasonable behaviour during the consideration of the application on the part of the Council. However, I have not been provided with any evidence that the behaviour of the Council has resulted in wasted expense in relation to the applicant's appeal.
10. As detailed in my formal decision, I have not been made aware of any local cases involving approved systems of similar size and design and in a similar context and with a similar relationship with the host building. I, therefore, cannot say that the Council has acted inconsistently in its determination of the application. I have also dealt with the suggestion of conditions to either require screening or painting the system in my formal decision and concluded that such conditions would not meet the tests in the PPG.
11. The differences to the previous scheme are noted in the officer report. Whilst I appreciate that the outcome of the application will have been a disappointment to the appellant, the Local Planning Authority were not unreasonable in coming to the decision to refuse, and indeed following consideration of the application on its merits, I have concurred with the Council.
12. I find nothing to suggest that a decision was not reached on the basis of the proposal, as submitted by the applicant, and assessed against the Development Plan. For this reason, I find that the Council has not prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan.
13. As detailed in my formal Decision, I have found that the Council had reasonable concerns about the proposed development which justified its decision. The appellant had to address those concerns and therefore the appeal could not have been avoided.

14. I therefore have no substantive evidence that the Council has acted unreasonably in regard to the appeal. As such, there can be no question that the applicant incurred unnecessary or wasted expense in the process of the appeal.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated, thus the award of costs is not justified.

K Townsend

INSPECTOR