



Costs Decision

Site visit made on 3 August 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Costs application in relation to Appeal Ref: APP/A2280/W/22/3304737 153 Fairview Avenue, Wigmore, Gillingham, Kent ME8 0PX

- 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 Mrs D Kaur for a full award of costs against Medway Council.
- The appeal was against the refusal of planning permission for change of use from butcher's shop to takeaway pizza shop (sui generis) together with the provision of a rear service yard area for staff parking and deliveries.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 applicant raises a number of concerns arising from the Council's consideration of the planning application and subsequent need to appeal.
3. The Planning Committee were entitled to take a different view to its officers and consultees, and that in itself does not amount to unreasonable behaviour. The Council's case refers to a document 'Hot Food Takeaways in Medway' Guidance Note 2014 and an Inspector of an earlier appeal cast doubt over its status¹. While this appears not to have been clarified by the Council, I nonetheless do not consider that the use of this guidance was unreasonable given its reference to the associated adopted policies.
4. The applicant alleges that the Council's determination of the application was not consistent with the previous planning decisions on the site. The last application, and subsequent appeal² related solely to the matter of highway safety. An Inspector's decision prior to that³, relating to a similar proposal on the same site, found the development to be acceptable in respect of the vitality of the local centre and health. The officer's committee report highlighted these important aspects of the planning history. It is not apparent why matters relating to health and vitality of the centre were then raised again as a reason for refusal of the appeal scheme.
5. The PPG states that behaviour which may give rise to a substantive award of costs against a local planning authority can include persisting in objections to a

¹ APP/A2280/W/21/3269403

² Ref MC/20/3082 and APP/A2280/W/21/3274592

³ Ref 19/2316 and W/4000391

scheme which an Inspector has previously indicated to be acceptable, and not determining similar applications in a consistent manner. For the above reasons, both these occurred in respect of the first reason for refusal, and caused the applicant to incur unnecessary expense in respect of this issue at appeal.

6. In respect of the matter of highway safety, while the appellant had submitted additional information to address the earlier appeal decision, the Committee were not bound to accept that information and were entitled to reach their own view. As such, the proposal should not necessarily have clearly been permitted. However, there is not substantive evidence of the reasons why the Committee chose to disagree with the appellant's substantive evidence. The minutes of the Committee meeting state only that members considered that nothing had really changed since the last decisions, rather than considering the application documents. As such, the Council's decision appears to have been based on vague and generalised assertions about the proposal's impact, which were not substantiated. This is also an example of the unreasonable behaviour described by the PPG, which led to the need for the appeal.
7. Given these findings, it is clear that unreasonable behaviour occurred in respect of both reasons for refusal, which caused the applicant to incur unnecessary or wasted expense in the appeal process. Accordingly, the application for costs is allowed.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Medway Council shall pay to Mrs D Kaur the costs of the appeal proceedings described in the heading of this decision. Such costs shall be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Medway Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Shearing

INSPECTOR