



Costs Decision

Site visit made on 26 January 2024

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 22 February 2024

Costs application in relation to Appeal Ref: APP/W1850/X/23/3323830 Unit 3, Rockfield Road Industrial Estate, Hereford HR1 2UA

- 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 Rockfield Spirits Ltd for a full or partial award of costs against Herefordshire Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a lawful development certificate for proposed use or development for the use of the building for distilling and bottling of gin and rum, storage area, office accommodation, ancillary retail, training and tours.
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Decision

1. The application for a partial or full award of costs is refused.

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.
3. The applicant considers the Council acted unreasonably by failing to determine the application in a timely manner; preventing or delaying development; giving vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; Not working proactively with the applicant; and acting contrary to, or not following, well-established case law and established appeal decisions.
4. The PPG advises that, in an appeal against non-determination, the Council should explain its reasons for not reaching a decision within the relevant time limit, and why the application would not have been granted had it been determined within the relevant period.
5. The Council's statement fulfils the second of these requirements, setting out a case for refusing the application, but reasons for not reaching a decision are not stated. Nevertheless, it is clear from the submissions that the Council did not consider that the application provided sufficient information upon which the case officer could make a judgement, on the balance of probabilities, as to whether the proposal would fall within use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). This position was relayed to the applicant in email correspondence.
6. Section 192(2) of the Town and Country Planning Act 1990 (the Act) says that if the local planning authority are provided with information satisfying them that the use described in the application would be lawful at the time of the

application, they should issue a certificate and in any other case they shall refuse the application. The onus of proof is on the applicant for providing satisfactory information to the Council in cases relating to a proposed use. In this case the Council was not persuaded by the evidence presented and thus acted in accordance with the Act in its deemed refusal.

7. Although substantive reasons to justify the delay to the application were not provided, and delays in the determination process are frustrating, the Council has clearly set out why, if it had made a decision, it would have refused to issue a certificate. Accordingly, even if there had been better communication, it is unlikely that the applicant would have been spared the need to pursue an appeal. For this reason, and while the limited explanation for the delay may be unreasonable behaviour, it has not been demonstrated that the applicant incurred unnecessary or wasted expense in the appeal process as a result.
8. Moreover, although the non-determination of the application is unfortunate, the applicant was aware of the likely decision and could have taken the opportunity to appeal the non-determination as soon as the deadline for determination of the application had passed. Notwithstanding this, the applicant has established their business in the premises and the distillery has been operating for some time. Accordingly, I find that the applicant's claim against the Council preventing or delaying development to be unfounded in these circumstances.
9. The Council's conclusion on the matter was based on its planning judgement of the facts presented and there are no examples of Case Law or examples of appeal decisions provided by the applicant to suggest why they consider the Council's deemed refusal to be contrary. Overall, I do not consider that the Council failed to properly evaluate the LDC regarding whether the proposal would be a material change of use from the previous use of the unit which supplied and fitted windows, doors and conservatories.
10. Consequently, and even though I concluded to the contrary, s195 of the Act is clear that my remit is confined to considering whether the refusal was well-founded and not the reasons for it. In this case, I find that there was no fundamental defect in the Council's approach in its decision making and the Council was entitled to make the judgement it did based on its interpretation of the Use Classes Order and information contained in the application.
11. An award of costs is only justified if unreasonable behaviour is the cause of unnecessary or wasted expense. I am satisfied, having regard to the facts and circumstances, that while there was unreasonable behaviour on the part of the Council due to timeliness, it has not been demonstrated that the applicant has incurred unnecessary or wasted expense in connection with the appeal.
12. I conclude accordingly that an award of costs, either partial or in full, is not justified and the costs application should not succeed.

S A Hanson

INSPECTOR