



Costs Decision

Site visit made on 2 April 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2024

Costs application in relation to Appeal Ref: APP/W0734/W/24/3338339 200 Linthorpe Road, Middlesbrough TS1 3RF

- 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 Shobu Barua of Coco & Rum for a full award of costs against Middlesbrough Council.
 - The appeal was against the refusal of planning permission for the erection of a conservatory and change of use from public house to restaurant.
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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 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. The engagement of a planning consultant to defend an appeal is not itself an unnecessary cost unless unreasonable behaviour on the part of the Council can be demonstrated.
3. 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.
4. In this instance the applicant is seeking, on procedural and substantive grounds, a full award of costs against the Council on the grounds that the Council unreasonably delayed and prevented development which should have been permitted.
5. Concerns had been raised during the course of the application regarding the conservatory by both the case officer and the conservation officer, and the proposal had been subsequently amended. Whilst I share some sympathy with the appellant, in that they were led to believe the application would be approved and therefore the decision came as a surprise. However, the Council state that the conservation officer's concerns remained about the harm to the architectural significance of the building and its townscape value. Therefore, from what I have seen and read, the amended plans did not entirely resolve the Council's concerns and the application was subsequently refused. Ultimately the Council was entitled to take the decision it did, and the right of appeal against refusal of planning permission exists in such instances.
6. Planning law is clear that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. It was the Council's assertion that the proposal did not accord with policies in the

development plan and have set out clearly why they think that is the case. Therefore, the Council has not acted unreasonably in refusing the application.

7. Whilst it is regrettable that the application took a considerable amount of time to determine, and this meant that the applicant missed an opportunity to open the restaurant before a potentially lucrative time at Christmas and I appreciate that this was the source of frustration to the applicant. Whilst not demonstrating good customer service, in my opinion, in this instance the time to determine the application falls short of unreasonable behaviour. Furthermore, from the information before me, the applicant did not utilise the Council's pre-application service which can provide useful guidance in the acceptability of a proposal prior to the submission of a formal planning application and is designed to speed up the planning process.
8. I accept that the conservatory could possibly have been removed from the proposal. However, a subsequent application has been submitted for the change of use alone and this was determined quickly. Had the conservatory element of the appeal application been removed it is highly likely that an application for it would have been later submitted as a standalone application. Unreasonable additional costs have therefore not been incurred and in the event of that application being refused, an appeal would have been probable in any event.
9. Based on the above, none of the types of behaviour which may give rise to a substantive or procedural award under the PPG have been established. I, therefore, conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not warranted.

KL Robbie

INSPECTOR