



Costs Decision

Site visit made on 16 April 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st May 2024

Costs application in relation to Appeal Ref: APP/W4325/W/23/3329937 68 Oxtan Road, Birkenhead CH41 2TW

- 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 Sayful Islam Ali for a full award of costs against Wirral Metropolitan Borough Council.
 - The appeal was against the grant subject to conditions of planning permission for change of use from a convenience store (use class e) to a hot food take away (sui generis), along with the installation of a flue extraction system to the rear.
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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 PPG states that awards may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal. This application is made on procedural grounds.
3. The applicant submits that a full award of costs is justified as he considers condition 4 to be a pre-commencement condition. He therefore contends that the Council acted unreasonably in imposing the condition without obtaining his written agreement to it prior to issuing the decision.
4. The Council have stated why, in their opinion, the condition is necessary and have justified the reasons for the condition. They do not consider it to be a pre-commencement condition.
5. For the reasons set out in my decision I found condition 4 to be a pre-commencement condition which should be complied with before the change of use is commenced.
6. The Council was therefore in error by not obtaining the agreement of the applicant before imposing the condition on the grant of planning permission. I consider this amounted to unreasonable behaviour on procedural grounds.

Conclusion

7. For the reasons given above, unreasonable behaviour resulting in an unnecessary appeal has occurred. The applicant has therefore incurred wasted expense and a full award of costs is warranted.

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 Wirral Metropolitan Borough Council shall pay to Mr Sayful Islam Ali the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Wirral Metropolitan Borough 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.

H Senior

INSPECTOR