



Costs Decision

Site visit made on 31 July 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2024

Costs application in relation to Appeal Ref: APP/F5540/W/23/3328623 1-3 Duke of Cambridge House, Kingsley Road, Hounslow TW3 1PA

- 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 G Khan for a full award of costs against the Council of the London Borough of Hounslow.
 - The appeal was against the refusal of planning permission for change of use of shop (class E) to hot food takeaway (Sui Generis).
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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 only 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's application for costs is based on the alleged unreasonable behaviour of the local planning authority ('LPA') and wasted expense, for the reasons considered below.
4. The applicant contends that the LPA failed to consider the extant permission for a restaurant/café which also includes an element of takeaway. The relevant planning permission is referenced in the LPA's Delegated Report. As such, there is nothing to suggest that the LPA did not take account of this. As to how much weight is attributed to this planning permission is a matter of judgement for the decision maker. Irrespective, the LPA has advised that this planning permission was not implemented and has lapsed. I have no clear evidence to refute this. As such, this does not in itself constitute unreasonable behaviour.
5. The LPA's second and third reasons for refusal relate to an extraction flue which is shown on the proposed drawings. However, the description of the proposal on the application form does not refer to the extraction flue. Also, the position of this extraction flue appears to be outside the appeal site boundary as edged red on the submitted drawings.
6. During the application stage in response to a request from the LPA to provide additional details in relation to the extraction flue, the applicant confirmed in writing that the application does not propose any extraction units. Subsequently, the LPA advised the applicant via email of the new description of the proposal which did not refer to the extraction flue.

7. Although it is unclear why the extraction flue is shown on the submitted drawings, in light of the above, I have accepted the applicant's submissions that this does not form part of the proposed scheme. As such, I do consider that it was unreasonable for the LPA to then refuse the planning application for reasons relating to the extraction flue.
8. Nonetheless, the PPG advises that "an application for costs will need to clearly demonstrate how an alleged unreasonable behaviour has resulted in unnecessary or wasted expense."
9. In this case, the applicant's response to the reasons for refusal relating to the extraction flue in its appeal statement, simply reiterates previous submissions that the scheme does not include an extraction unit. Therefore, I fail to see what wasted or unnecessary expense can be attributed to the reasons for refusal which relate to the extraction flue.
10. Notwithstanding the above, the LPAs decision also includes the first reason for refusal, which relates to the nature and location of the proposed change of use. Therefore, while I cannot be certain, it seems likely that even if the LPA had not included the second and third reasons for refusal, this would not have altered the LPAs decision to refuse the planning application. Therefore, an appeal could not have been avoided.
11. Given all of the foregoing, I conclude that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. Therefore, a full or partial award of costs is not justified.

M Aqbal

INSPECTOR