The Planning Inspectorate

Costs Decision

Site visit made on 20 September 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2024

Costs application in relation to Appeal Ref: APP/V2004/W/24/3343399
458-462 Holderness Road, Kingston Upon Hull, HU9 3DS

- 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 S Hakim of Maze Hull Ltd for a full award of costs against Kingston-Upon-Hull City Council.
- The appeal was against the refusal of planning permission to vary condition No. 14 for planning approval No. 22/01242/S73 To permit the use of one of the approved retail units to also be used as a Gym at 458-462 Holderness Road, Kington Upon Hull HU9 3DS in accordance with the application Ref 24/00165/S73, without compliance with condition number 10 previously imposed on planning permission Ref 23/02830/S73 dated 2 November 2023.

Decision

1. The application for an 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 PPG outlines that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

4. The applicant considers that the Council has behaved unreasonably in refusing planning permission for the development and should have granted planning permission having regard to the development plan and other material considerations including the recommendation of planning officers.

5. Although it can be seen from my decision that I disagree with the Council's decision, I find that Members of the Planning Committee did not act unreasonably in refusing planning permission contrary to the advice of planning officers. Following the decision, I consider that the Council provided a reasonable and objective analysis to substantiate its reasons for refusal.

6. From the Council's evidence and the representations which were submitted, the main issue in the case relates to the impact the proposed variation would have

on the living conditions of occupants of residential properties on Newcomen Street from noise, disturbance, and congestion. From my understanding, it is not the Council's case that congestion would be detrimental to the safe operation of the highway, or that there would be severe highway impacts as a result. Were this to have been the case, I would agree with the applicant that it had not been substantiated by the Council that there would be unacceptable highway impacts.

7. The evidence shows that the proposed variation to the condition would result in a material change to how refuse is collected on Newcomen Street, namely refuse containers requiring transportation via the existing access on collection day, and a longer dwell time for the refuse vehicle. The Council were of the view that these changes amounted to an unacceptable impact. Although I have come to a different view, insofar that for the reasons I have given, I do not consider that the changes would amount to an unacceptable impact, I also do not consider that the Council's concerns amount to unreasonable behaviour. The Council exercised its planning judgement in coming to this decision.

8. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the Applicant was put to unnecessary or wasted expense.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated.

A M Nilsson

INSPECTOR