



Costs Decision

Site visit made on 22 January 2025

by **A. J. Boughton MA (IPSD) Dip.Arch. Dip.(Conservation) RIBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25th February 2025

Costs application in relation to Appeal Ref: APP/K0235/W/24/3351038

Unit 1, 147 Brooklands Avenue, Wixams, Bedford MK42 6AE

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Kandhola, DPSK Ltd. for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for Change of use from Restaurant (Class E) to hot food takeaway (sui generis) with single storey rear extension and installation of extract and ventilation equipment.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance 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 applicant¹ alleges that the Council have failed to demonstrate a link between reports of anti-social behaviour and the appeal site in either its current or proposed use and that the Council did not take into account the similarity between the proposed and existing uses of the site with regard to parking and servicing provision.
4. A costs application does not depend on the outcome of the related appeal but upon the behaviour of the parties involved. The appellant in the appeal has sought to minimise the differences between the existing and proposed uses² and in part the applicant is suggesting the Council were unreasonable in not regarding the proposed use as being very similar to what it would replace. However, my decision points to substantive issues in this appeal that relate to hot-food takeaways as distinct from restaurant or other class E uses and, plainly, the exclusion of hot-food takeaways from any use class³ is indicative of aspects of use which require specific consideration. A material difference, for instance, is the capacity for a hot-food takeaway (HFT) to ramp up its sales and delivery in response to peaks of demand by adjustments to staffing levels, whereas a restaurant will have a finite seating

¹ Applicant for costs

² It is noted that the applicant refers to the 'existing lawful use of the site as a restaurant and hot food takeaway' which appears to suggest a dual primary use when hot food sales of a restaurant, which is understood to be the permitted use, are necessarily ancillary or incidental to that use and therefore limited in extent.

³ The 2020 revision to the Use Classes Order

capacity which cannot be easily raised. In so far as the Council's case rests upon the likely effects of such substantive differences it cannot be unreasonable.

5. The applicant suggests that the first refusal reason (RFR) was not adequately substantiated. RFR1 refers to anti-social behaviour (ASB) in the following terms: *"The addition of a takeaway use adjacent to an existing takeaway use in a small neighbourhood centre of three units, when also considering that the area is already experiencing anti-social behaviour and nuisance issues, would, in all likelihood, increase the risk of anti-social behaviour incidents taking place which would be to the detriment of amenity and environmental quality"*. going on to refer to the relevant development plan policies : *"It is considered that the proposal would give rise to disturbance to neighbours and the surrounding community and as such, it is considered that the proposal fails to accord with.... (etc)"*.
6. The applicant complains of a lack of evidence linking ASB events, or their likelihood, to the appeal site or the new use proposed. The officer report details the consultation response of Bedfordshire Police's 'Designing Out Crime' officer, listing 'a range of safety and security considerations' and a trend of increase of 'crimes and incidents' since 2020 that have been 'recorded at the location address'. It is indisputable that the location (as distinct from the appeal site) has experienced these trends and the Council conclude from this, in terms '*....considering that the area is already experiencing anti-social behaviour and nuisance issues, (the proposal) would, in all likelihood, increase the risk of anti-social behaviour incidents taking place which would be to the detriment of amenity and environmental quality*'. (emphasis added).
7. The applicant's complaint is that there is no evidence to link the proposal or the appeal site with this trend, however that would be to apply a test of causation which, in itself, is not a reasonable expectation within a process of professional assessment given the expert source of advice/information being reported in the context of a *proposed* use. Taken together with the responses from the community (Parish Council and neighbours) along with other considerations the implication of risk of disturbance arising from the proposed use is a fair assessment by a decision-taker tasked with making an assessment that is open to public scrutiny.
8. The level of staff parking was disputed by the parties. It is relevant that the applicant submitted additional information to the appeal (Parking Survey) and adjusted their presentation of staffing levels (by reference to full-time equivalence). Staffing levels and parking provision were at the heart of any consideration as to impacts of the proposed use and the potential for disturbance. It was apparent to the parties that the 2014 Parking SPD might not reflect the current position as to food delivery services, consequently it was not unreasonable for the Council to come to a different conclusion as to the level of staff parking to that proposed by the appellant or found in the SPD.
9. Overall, the matters raised in the Council's considerations have been relevant and appropriate. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Andrew Boughton

INSPECTOR