



Costs Decision

Site visit made on 24 November 2011

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 January 2012

Costs application in relation to Appeal Ref: APP/L5810/A/11/2158248 80 High Street, Hampton Hill TW12 1NY

- 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 Edgewest Lambeth Ltd for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against the refusal of planning permission for the change from A4 to A5 Use Class, to include a ground floor extension and re-positioning of associated plant at roof level.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Circular 03/2009 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. Planning permission was refused by the Council for an identical proposal in April 2011, for reasons related to residential amenity and the lack of marketing of the premises. (This proposal was recommended for approval by officers.) The application was resubmitted with additional marketing information, and this second application was recommended for refusal by officers. Planning permission was refused for the second application only on amenity grounds, related to litter.
4. Planning authorities are expected to produce evidence at the appeal stage to substantiate reasons for refusal with reference to the development plan and all other material considerations – if they cannot do so, they risk a costs award. In this case, there was only one reason for refusal – related to the effect of the proposal on the surrounding area. (Third parties raised a number of other issues.)
5. The Council's position on the appeal rested on a generalised assertion about the impact of the proposal, unsupported by any objective analysis. Nor was there any reason given why the mitigation measures put forward by the appellants, which were accepted as adequate by Council officers in April, were regarded as inadequate.

6. Had specific evidence, such as might have been obtained in relation to similar outlets in similar locations elsewhere, been provided it would have lent weight to the Council's position. Whatever the outcome might have been on the planning merits of the case, the position of the authority would have been supported by substantial evidence. However this is not the case, and to refuse planning permission under these circumstances was unreasonable.
7. The appellant also drew attention to the contradictory recommendations from officers on the two applications. The Council states that the further progress towards the adoption of the Development Management DPD, along with the first decision by Members, were factors leading to the change in professional opinion in relation to the second application. However the effect on the amenity of the area was always an issue supported by policy, and the progress of the draft policy can realistically have made little difference. It is also hard to see why the decision of Members to overturn the officers' recommendation on the first application, as they were entitled to do, would lead to a change in the professional position in relation to the second application. Although this matter may be an indicator of unreasonable behaviour by the Council, it is not determinative in this case.
8. Finally, the appellant drew attention to the grant of planning permission for a similar use at another High Street property. However the circumstances of this case, about which I have limited information, are bound to be different in detail to the current appeal, and it is not necessarily unreasonable for the authority to have reached a different decision in the two cases.
9. However overall it is clear that the Council failed to substantiate the reason for refusal, and accordingly behaved unreasonably. This caused the appellant to incur unnecessary expense in the appeal process.

Costs Order

10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.
11. The applicant is now invited to submit to the Council of the London Borough of Richmond-upon-Thames, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

P. J. G. Ware

Inspector