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## Costs Decisions

Site visit made on 23 November 2021

**by Andrew Owen BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 06 December 2021**

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### **Costs applications in relation to Appeal Refs: APP/Y0435/W/21/3275159, APP/Y0435/W/21/3275162 & APP/Y0435/W/21/3275164**

#### **Unit 34 Walker Avenue, Wolverton Mill, Milton Keynes MK12 5TW**

- The applications are 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 applications are made by Mr Fahd Kahn for a full award of costs against Milton Keynes Council.
  - The appeals were against the refusal to grant approvals required under Schedule 2, Part 3, Class O of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter 'the GPDO') for the change of use from office (Class B1a) to 8 dwellings (9 dwellings in the case of APP/Y0435/W/21/3275164).
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### **Decisions**

1. All three applications for an award of costs are allowed in the terms set out below.

### **Reasons**

2. Planning Practice Guidance advises that irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to procedural matters, for example by withdrawing a reason for refusal or introducing a new reason for refusal.
3. The only reason for refusal given for all three applications related to the fact that some of the flats were less than 37m<sup>2</sup>. The Council mistakenly believed this was a requirement of the GPDO, whereas in fact this requirement did not apply to applications submitted before 6 April 2021, which these three applications had.
4. They have since accepted their mistake and so effectively withdrawn their reason for refusal. Therefore, it is likely that had they applied the GPDO correctly they would have approved the applications as there is no evidence before me of any other concerns they had at that stage. Indeed, a similar application for a change of use of the unit to seven dwellings<sup>1</sup> was approved by the Council. The subsequent appeals would therefore not have been necessary, and so they have been a wasted expense on behalf of the applicant.

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<sup>1</sup> Ref 21/00796/PANB1C

5. During the appeals the Council introduced a different reason why the applications should have been refused, and as I agree with that I have dismissed the appeals. Nonetheless, their complete changing of their grounds for objection to the proposals was unreasonable behaviour.
6. Whilst I have some sympathy for the reasons given for their error, their incorrect reading of the GPDO and their resultant total change of the reason for their objections to the applications constitutes unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance. As such, a full award of costs is justified for all three appeals.

### **Costs Order**

7. 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 Milton Keynes Council shall pay to Mr Fahd Kahn the costs of the appeal's proceedings, more particularly described in the heading of this decision.
8. The appellant is now invited to submit to Milton Keynes Council, to whom a copy of this decision has been sent, details of these costs with a view to reaching an 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.

*Andrew Owen*

INSPECTOR