

Costs Decision

Site visit made on 18 October 2016

by Grahame Gould BA MPhil MRTPI

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

Decision date: 22nd November 2016

Costs application in relation to Appeal Ref: APP/P3610/W/16/3150854 Aldi Stores Limited, Kingston Road, Ewell, Surrey KT19 0BS

- 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 Aldi Stores Limited for a full award of costs against Epsom and Ewell Borough Council.
 - The appeal was against condition 1 imposed on planning permission 15/00993/REM, development described as 'Variation of Condition 11 of (Delivery hours) of planning permission Ref 13/00520/FUL to allow the store to be serviced from 06:00 – 23:00 (Mon – Sat) and 08:00 – 19:00 (Sun)'.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the 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 application for costs has been made on a substantive basis, with the applicant contending that the Council acted unreasonably in refusing to fully vary the terms of condition 11 of planning permission 13/00520/FUL so that deliveries to the store could be made up until 2300 on Mondays to Saturdays and 1900 on Sundays. The grounds for this allegation being that the Council's Environmental Health Officer raised no objection to condition 11 being varied and the submitted acoustic report demonstrates that the extended periods for making deliveries to the store would not be harmful to the living conditions for the occupiers of the neighbouring dwellings.
 4. The applicant also contends that the Council in failing to submit any empirical evidence of its own has not substantiated its reasons for not permitting the variation of condition 11 in its entirety.
 5. In determining the appeal I have concluded, on the basis of the available evidence and my on-site observations of the operation of the store's warehouse platform leveller, that the occupiers of Flats 7 and 8 Kingston Court (Nos 7 and 8) could experience unacceptable levels of noise disturbance during the later evening period were the delivery hours to be extended.
-

6. The Council's case was made in very brief terms, with reliance being placed upon its officer report, which is vague in identifying how the extension of the delivery hours into the evening period might cause noise disturbance to the occupiers of neighbouring properties. I therefore consider that the Council's case was deficient in terms of the second (lack of evidence) and third (vague assertions) grounds of possible unreasonable behaviour referred to in paragraph 049 of the PPG.
7. However, notwithstanding the limitations of the case presented by the Council, its decision to refuse planning permission was not an unreasonable one. Indeed, I agree with that decision and, for the reasons set out in the appeal decision, I have dismissed the appeal. Accordingly, the Council's decision has not prevented development which should clearly have been permitted (the first bullet point in paragraph 049 of the PPG).
8. I recognise that in submitting the appeal the applicant has incurred costs in engaging a planning consultant to present its case. However, as I have already indicated, the decision to refuse planning permission was not, in itself unreasonable. Accordingly, the decision itself cannot lead to an award of costs. Furthermore, I have no evidence to suggest that the deficiencies of the Council's case have added to the costs incurred by the appellant in making the appeal. Even if the Council's appeal case had been fuller, the outcome of the appeal would have been no different.

Conclusion

9. For the reasons given above I conclude that, although the Council acted unreasonably in not substantiating its case, it has not caused unnecessary expense. Accordingly, the conditions for an award of costs are not met and the application is refused.

Grahame Gould

INSPECTOR