The Planning Inspectorate

Costs Decision

Site visit made on 2 December 2016

by Graeme Robbie BA(Hons) BPl MRTPI

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

Decision date: 13 December 2016

Costs application in relation to Appeal Ref: APP/V5570/W/16/3155434
London Canal Museum, No 12-13 New Wharf Road, London N1 9RT

- 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 the Canal Museum Trust (c/o Martin Sach) for a full award of costs against the Council of the London Borough of Islington.
- The appeal was against the grant subject to conditions of planning permission for the installation of one air conditioning unit at roof level.

Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) advises at paragraph 30 that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and, in doing so, thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The Guidance goes on to indicate that local planning authorities will be at risk of an award being made against them if they impose a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework (the Framework) on planning conditions and obligations. In terms of necessity, the Guidance states that local planning authorities should consider whether it would be appropriate to refuse planning permission without the requirements imposed by the condition; ie, is there a definite planning reason for the condition and is it needed to make the development acceptable in planning terms?

4. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable, and provide clear reasoning to substantiate that reasoning.

5. In this instance, the appellant submitted a detailed technical report that established existing background daytime and night-time noise levels. The technical report considered the manufacturers published specifications for the air conditioning unit and assessed the sound levels generated by the operation of the unit on the nearest noise sensitive receptors with, and without, acoustic screening.

6. The report demonstrated that, with an appropriate acoustic envelope around it, the air conditioning unit would operate at levels below existing daytime and night-time background noise levels. The Council's Public Protection Pollution team considered the conclusions of the technical report and considered both it, and its conclusions, to be satisfactory. The advice of its professional officers was that the proposal would not contribute to noise in the area that would adversely affect neighbouring residential occupiers and that there was no requirement to limit the hours of operation of the unit.

7. The Council Members considered otherwise, however, seeking to restrict the hours of operation of the air conditioning unit by way of the disputed condition. However, the conclusions reached in the technical evidence have not been challenged in the Council's subsequent submissions, and are not therefore in dispute in the current instance. Although the Council have sought to justify the condition in terms linking the hours of operation of the unit to the opening times of the museum, with reference to limitations set out in a unilateral undertaking related to a previous application, the need for the condition has not been addressed.

8. It appears to me therefore that, in the planning judgement and on the evidence before me, and having regard to the provisions of the development plan, national planning policy and other material considerations, the disputed condition fails the tests of necessity and reasonableness in all other respects. In this respect I find that the Council has acted unreasonably. As a planning condition has to satisfy all of the six tests, and any condition that fails to meet any of the six tests should not be used, it follows that the appellant has been faced with the unnecessary expense of lodging the appeal.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 the Council of the London Borough of Islington shall pay to the Canal Museum Trust (c/o Martin Sach), the costs of the appeal proceedings described in the heading of this decision.

11. The applicant is now invited to submit to the Council of the London Borough of Islington, 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.

Graeme Robbie

INSPECTOR