
Costs Decisions

Site visit made on 18 November 2016

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 16 December 2016

Costs Application A, in relation to Appeal Ref: APP/G5180/W/16/3150702 Bristol Street Motors Ltd., Sevenoaks Road, Pratts Bottom BR6 7LP

- 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 Mr Andy Johnson, Vertu Motors Plc., for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of planning permission for the installation of required ventilation ductwork, air handling unit and condensers.
-

Costs Application B, in relation to Appeal Ref: APP/G5180/W/16/3150712 Bristol Street Motors Ltd., Sevenoaks Road, Pratts Bottom BR6 7LP

- 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 Mr Andy Johnson, Vertu Motors Plc., for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of planning permission for a new wash building and 2m high acoustic timber fencing.
-

Decisions

Costs Application A:

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

Costs Application B:

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

Reasons

3. 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.

Application A:

4. The Council's decision on the planning application was taken against the advice of the Council's Environmental Health Officer who, following the submission of an acoustic assessment, raised no objections. This advice was subject to the imposition of conditions comprising the installation of an acoustic fence around the plant and the maintenance of standing noise level limits.
5. However, Members considered that sound readings may have been taken during a period when the car wash was in use, distorting measured background

- levels and making the assessment unreliable. This concern is expressed further in paragraph 7.8 of the Council's appeal statement which adds that, since the plant was already installed and operating, actual rather than calculated operational noise levels could have been used for greater accuracy, and that the assessment was carried out to a superseded version of BS4142.
6. The Planning Practice Guidance advises that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. In this case, a condition could have been imposed requiring, within a defined period of time, testing in situ under controlled circumstances to current standards to verify the application assessment. This is the substance of the condition imposed in allowing the appeal.
 7. 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 partial award of costs is justified.

Application B:

8. The Council's decision on the planning application was taken in accordance with officers' advice that control of noise to reasonable levels would be dependent on quite extensive mitigation, much of it of a behavioural nature, and it is questionable whether the necessary conditions would be realistic, practical and enforceable. The applicant contends that the Council could have explored further options for suitable conditions and that there would have been great value in continuing discussions on conditions.
9. At appeal it was decided that, on balance, conditions could be formulated to accord with Paragraph 206 of the National Planning Policy Framework. Nevertheless, I consider it reasonable that the Council thought otherwise, given the difficulties in consistently monitoring activity on site. The exploration of further options with the applicant might have been possible but, in substance, any conditions arising would probably still have involved monitoring and I am satisfied that the Council sufficiently considered the options available.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Costs Order

11. 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 London Borough of Bromley shall pay to Mr Andy Johnson, Vertu Motors Plc, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in Application A; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alan Novitzky - Inspector