
Costs Decision

Site visit made on 13 December 2016

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 10 January 17

Costs application in relation to Appeal Ref: APP/C4615/W/16/3157418 The Hasbury Inn, 218 Hagley Road, Halesowen, Dudley B63 4QQ

- 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 NewRiver Retail Property Unit Trust for a full award of costs against Dudley Metropolitan Borough Council.
 - The appeal was against the grant subject to conditions of planning permission for the variation of conditions 2, 4 and 14 of approved planning application P15/0502 to alter approved plans, delivery times and provision of an electric vehicle charging point and associated electrical infrastructure.
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Decision

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

Reasons

2. Planning Practice Guidance¹ (PPG) 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 or wasted expense in the appeal process. It states² that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal.
3. PPG³ advises that a "condition limiting use to a temporary period only where the proposed development complies with the development plan, or where material considerations indicate otherwise that planning permission should be granted, will rarely pass the test of necessity." The same paragraph goes on to highlight that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area.
4. Having regard to the submissions made by the local planning authority, it is evident that it has concerns that noise and disturbance arising from extending the hours of delivery has the potential to impinge upon the living conditions of occupiers of the surrounding residential properties, contrary to Saved Unitary Development Plan Policies DD2, DD4 and EP7. These concerns reflect the advice provided by the Council's Environmental Health Officers.
5. Whilst it will be evident from my decision that I have not found the temporary aspect of Condition 4 to be necessary, it is however necessary to retain a time

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

³ Paragraph: 014 Reference ID: 21a-014-20140306

restriction condition relating to the hours of delivery to protect the living conditions of nearby residents. Such a condition would also be relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus in compliance with the six tests of conditions set out in paragraph 206 of the National Planning Policy Framework.

6. Therefore the residual matter is the duration of the restriction. In this regard, given the concerns expressed by the Council's own professional advisors within its Environmental Safety and Health Team, the local planning authority was not unreasonable in applying a temporary approach with the intention to allow the effects of the longer hours to be established before a permanent change is permitted. This approach is consistent with the above advice contained within the PPG and demonstrates a reasonable and pragmatic approach on the part of the Council. The lack of public objection to the proposal does not justify setting aside the material concerns expressed by the Council.
7. Although Conditions 5, 6 and 7 certainly help minimise any noise disturbance to neighbouring residents, on their own they would not resolve the effects arising from deliveries to the store.
8. I accept that from a position of certainty, it is preferable to omit the temporary aspect of the condition, however, I am not convinced that this aspect alone amounts to delaying development that should have clearly been permitted.

Conclusion

9. Therefore, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is not justified.

Richard S Jones

INSPECTOR