Costs Decision

Hearing held on 7 September 2016 and 29 November 2016

Site visit made on 29 November 2016

by Andrew Owen BA(Hons) MA MRTPI

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

Decision date: 07 February 2017

Costs application in relation to Appeal Ref: APP/Z0116/W/15/3141401
11-13 Queens Road, Clifton, Bristol BS8 1QE

- 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 3Sixty Real Estate for a full award of costs against Bristol City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a change of use from a retail unit (Class A1) to a cafe or restaurant (Class A3).

Decision

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

The submissions for 3Sixty Real Estate

2. The costs application was made in writing. The following additional points were made orally at the Hearing:

   - The Council are confusing food and drink uses with A1, A3 or A1/A3 uses;
   - It was unreasonable for the Council to assess the proposal in the context of the unauthorised use at Pret a Manger and not the lawful A1 use of that unit;
   - Despite the recently granted permission on the site, the Council are continuing to defend the appeal;
   - The Council refused planning permission without an officer having been to the rear of the site.

The response by Bristol City Council

3. The Council's response was made in writing. The following additional points were made orally at the Hearing:

   - The large scale of the proposal differentiates it from other sites nearby where details of extraction and ventilation equipment have been secured by planning condition;
   - The officer would have been to the site in order to conclude there would be an unacceptable impact on residents above the site;
   - Policy DM10 requires details to be provided in order to allow the effects on residential amenity to be assessed.

Reasons

4. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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.

5. It goes on to state 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, for example, by unreasonably refusing planning applications and preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

6. In respect of the first reason for refusal, the appellant, in their planning statement, cited a number of units near the site where planning permission had been granted for a change of use from A1 to A3. Although the officer's report did not include specific reference to these examples, it was a detailed report which assessed the proposal fully against the criteria in Policy BCAP16 and as part of that assessment considered that the terrace within which the appeal site sits is distinct from the rest of the shopping area, in which the examples quoted by the appellant are located. This view was not an unreasonable one to reach and took full account of the evidence submitted.

7. Also, in view of the Council's fundamental objection to the principle of the proposed use, I do not consider their refusal to meet with the appellant was unreasonable as no alterations could have been made to the proposal to make it acceptable.

8. At the Hearing the Council contended that the although some of the units in the terrace were A1 uses they were food and drink operations, such as at Subway, and that in this context the proposal would harm the retail perception of the frontage. Whilst it is correct to say that some of the nearby uses are food and drink businesses, they remain to be A1 uses or have A1 elements. However the parties did agree on the use classes of most of the nearby units and so the Council did not rely heavily on this in their case, and neither did the appellant incur any substantial expense in addressing this specifically. There was disagreement between the parties as to how Pret a Manger should be considered, however I do not consider either view was unreasonable and the use of this unit was not critical to the appeal.

9. Turning to the second reason for refusal, the appellant provided numerous examples, during the course of the appeal, of development nearby and elsewhere in the City where details of extraction and ventilation plant had been secured by condition and not required in order to determine the application. Furthermore the planning permission recently granted at the site included a condition relating to ventilation and extraction equipment.

10. It is clear that the extant permission at the site for a Class A1/A3 use is a different operation to that proposed, and that the other examples nearby related to smaller sites. This clearly differentiates these cases from the appeal proposal.

11. Nonetheless, from the numerous examples provided by the appellant, it seems commonplace that such details can be secured by a condition which ensures

the Council can fully assess the impact of the plant on the living conditions of nearby residents at that stage, particularly when the future occupiers of the unit and their extraction ventilation requirements are initially unknown. Such a condition would be reasonable, necessary and meet the other tests in paragraph 206 of the National Planning Policy Framework. Therefore in light of the evidence presented to them, the failure of the Council to adopt this approach was unreasonable. Although this alone did not mean the development was unnecessarily delayed, the appellant incurred wasted expense in the appeal process in addressing this matter.

12. It was not clear from the evidence whether the officer who dealt with the planning application had been to the rear of the site. However this has little bearing on my view that extraction and ventilation details could have been secured by a planning condition.

13. I note the requirements of Policy DM10. However a condition which requires ventilation and extraction details to be submitted at a later date and before occupation of the unit, would not bypass the requirements of this Policy and the Council would still be required to assess such details against this Policy at that time.

14. At the Hearing the appellant confirmed the application was for a full award of costs, unless I considered otherwise. For the reasons given above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated but only in relation to contesting the second of the two reasons for refusal and therefore a partial award of costs is justified.

Costs Order

15. 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 Bristol City Council shall pay to 3Sixty Real Estate the costs of the appeal proceedings, more particularly described in the heading of this decision, limited to those costs incurred in contesting the second of the Council's reasons for refusal.

16. The appellant is now invited to submit to Bristol City 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