

Costs Decision

Site visit made on 14 June 2016

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 16 February 2017

**Costs application in relation to Appeal Ref: APP/V4630/W/16/3146805
The Fiery Holes Public House, Great Bridge Road, Bilston, Walsall,
WV14 8NG**

- 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 Harjinder Singh Bagri for a full award of costs against Walsall Metropolitan Borough Council.
 - The appeal was against a refusal of planning permission for a two storey side extension to form a convenience store with manager's accommodation above, the conversion of the north-west side of the existing premises to form a hot food takeaway, and alterations to form new toilet facilities and a re-configured lounge area to the public house.
-

Decision

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

Reasons

2. 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
 3. The applicant contends that the Council has acted unreasonably by virtue of the refusal of planning permission on grounds of crime and impact on amenity from the treatment of waste, cooking odours, noise and disturbance, where these matters could have been resolved by the use of planning conditions. Furthermore, the applicant has indicated that the Council did not provide an opportunity to respond to the questions and concerns raised by the Council's Pollution Control Officer (PCO), prior to the refusal of planning permission, and despite the information commented on by the PCO having been submitted to the Council some months before.
 4. Addressing firstly the potential for the use of conditions, I have noted the Council's comments in respect of their consideration over the appropriateness of the use of conditions in addressing matters related to crime and the fear of crime, and would not disagree with the contention that they would have been entitled to reach a different conclusion on such matters. However, in this instance the evidence relied upon by the Council did not provide the necessary compelling support for the Council's stance, and for the reasons set out in the
-

- appeal decision letter, I am satisfied that the matters arising related to crime and the fear of crime were perfectly capable of being addressed by means of the use of conditions. With regards the issues related to amenity, I have reached a similar conclusion in the appeal decision letter that the various matters raised would be capable of being addressed and maintained in the future through the imposition of suitable conditions. I note that the Council has not made any further specific submissions in respect of the appropriateness of the use of conditions pertaining to the various amenity issues.
5. I will now turn to the issue of matters raised by the PCO. In this respect, I note from the chronology of events that a Noise Assessment was submitted by the applicant during the course of the planning application on 24 June 2015, in response to comments received by e-mail from the Council's PCO on 15 April 2015. The PCO response to the Noise Assessment was dated 17 September 2015, with an e-mail dated 18 September 2015 from the Senior Planning Officer to the appellant indicating that the Pollution Control comments along with the case was to be reviewed by the Team Leader. The comments from the PCO were sent to the applicant on 22 September 2015, with the planning application decision to refuse planning permission published the following day, 23 September 2015.
 6. I have carefully reviewed the PCO comments dated 17 September 2015, and note in particular that the final paragraph of the comments indicated the outstanding actions and issues that the applicant would need to address to progress the application. Whilst I accept that the Council had already afforded the applicant additional time beyond the normal statutory period for determining planning applications in order to provide a Noise Assessment, I consider that despite the duration of time taken by the Council PCO to respond to the requested assessment, it was unreasonable that the applicant was not then given the opportunity to address the issues raised. I appreciate that the Council may have wished to move to determine the planning application, but there was no conclusive indication within the PCO comments that a positive resolution was unlikely to be attainable in respect of amenity issues.
 7. I note the Council's reference to the previous refusal of planning permission ref: 14/0357/FUL, and the contention that the applicant should have been fully aware of the various outstanding matters which required addressing. However, it is clear that the Noise Assessment was responding to specific points raised during the course of the application by the Council, with the PCO comments from 17 September 2015 responding specifically to technical details within the submitted report. I have also noted the reference to the applicant failing to take up the opportunity to contact the PCO directly to discuss the case. However, whether the Council considers this to be an appropriate and normal course of action for applicants is unclear, although in the absence of any procedural evidence to the contrary, I find it more plausible to assume that the planning case officer allocated to lead on a specific application would have been the principal point of contact.
 8. The Council has alleged that the applicant's claim for costs relates to the original planning application and not the appeal. I have had regard to this contention and recognise that costs may only be awarded in relation to unnecessary or wasted expense at the appeal. However, I am mindful that the Planning Practice Guidance advises that *behaviour and actions at the time of the planning application can be taken into account in the Inspector's*

consideration of whether or not costs should be awarded. In this respect, I disagree that the applicant's Costs Claim relates specifically to the delay in the receipt of the PCO comments. It is evident that it is the action subsequent to the delay, where the applicant was denied the opportunity to resolve issues as a consequence of the specific timing of the pursuance of a refusal of planning permission by the Council, and the failure to apply conditions as a means of addressing outstanding matters, which rendered the need for the appeal. I am satisfied that these are substantive matters and fall within the scope of the costs regime.

9. In these respects, and being mindful of my conclusions in the appeal decision, it is clear that the Council has behaved unreasonably with the result that the applicant has been forced to go to the expense of an appeal. Therefore, on this basis, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

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 Walsall Metropolitan Borough Council shall pay to Mr Harjinder Singh Bagri the full costs of the appeal proceedings.
11. The applicant is now invited to submit to the Walsall Metropolitan Borough Council, 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.

M Seaton

INSPECTOR