The Planning Inspectorate

Costs Decision

Site visit made on 21 March 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 11th April 2017

Costs application in relation to Appeal Ref: APP/K5600/W/16/3164251
43 Thurloe Street, London SW7 2LQ

- 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 Richard Collier of Five Guys JV Ltd for a full award of costs against The Council of The Royal Borough of Kensington & Chelsea.
- The appeal was against the refusal of planning permission for the change of use from nightclub (sui generis) to restaurant (Class A3) with ancillary takeaway.

Decision

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

Reasons

2. Planning Practice Guidance 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.

3. In his application submission the applicant submitted ventilation/extraction details, including brochures outlining the proposed UV and ESP systems. Both of these brochures outline how these systems work and their method of maintenance. Furthermore, following the Council stating that the information was insufficient, the applicant submitted further information, including an Odour Management Statement, prior to the expiration of the consultation period. Notwithstanding this, the Council considered that such information would be deemed an amendment to the proposal and therefore could not be accepted as part of the application submission. However, I do not agree. The information did not amend the proposal but merely clarified how the system would operate, addressing the inadequacies identified by the Council. The acceptability of the information is not contended as it was deemed acceptable following the submission of the second application, albeit which was refused on separate grounds.

4. Had the Council duly considered the additional information during their consideration of the application, it would have addressed their single matter of concern and satisfied paragraph 187 of the National Planning Policy Framework. Therefore, I find that the Council acted unreasonably in not considering this information.

5. I note the applicant's reference to the undated comments from the Council's EHO, which he states were not available prior to the Council's determination of the application. However, whilst these comments may not have previously

been available to the applicant, they were submitted in a timely fashion within the prescribed period for the appeal submission documents. Furthermore, I do not consider that that the Council introduced additional information as part of their costs application rebuttal. This detail was effectively confirmed in the references to the history of the site from various parties as part of the appeal submissions, including the applicant.

6. Had the Council considered the additional information and found it to be acceptable, it would likely have been presented to the planning committee as five objections had been received. The subsequent application for a similar development at the same property, which comprised similar information, was determined by the planning committee and refused permission on separate grounds regarding the harm to the vitality of the Kensington District Centre. Therefore, it is reasonable to conclude that the application which formed the basis of this appeal would have been refused on similar grounds had it been presented to the Planning Committee. Accordingly, whilst the Council acted unreasonably in failing to consider the additional information, I do not find that it would have likely resulted in the granting of planning permission had they done so. Given the appellant's evident firm commitment to the proposal it is likely that an appeal would have been lodged regardless. Therefore, I do not consider that the correct consideration of the additional information would have avoided an appeal altogether.

7. However, the overall unreasonable behaviour of the Council in failing to consider the information submitted could have adequately addressed the single reason for refusal in the decision notice relating to the appeal. I find therefore that this unreasonable behaviour has resulted in unnecessary costs incurred by the applicant.

Conclusion

8. I therefore conclude unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and a full award of costs is justified.

Costs Order

9. 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 Royal Borough of Kensington & Chelsea shall pay to by Mr Richard Collier of Five Guys JV Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to The Council of The Royal Borough of Kensington & Chelsea, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alexander Walker

INSPECTOR