

Costs Decision

Hearing held on 31 January 2017

Site visit made on 31 January 2017

by David Cliff BA Hons MSc MRTPI

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

Decision date: 27th April 2017

Costs application in relation to Appeal Ref: APP/E0345/W/16/3152909 1 Derby Road, Caversham, Reading RG4 5HE

- 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 Ms C Miles for a full award of costs against Reading Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for "change of use from residential to physiotherapy clinic and residential without complying with condition 6 of planning permission 94/00488/FD – to remove named users from operating clinic" without complying with conditions attached to planning permission Ref 10/00992/VARIAT, dated 29 July 2010.
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Decision

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

Procedural Matter

2. The appellant's application for costs was initially made in writing as part of their appeal statement prior to the hearing. The Council subsequently responded to this claim in its appeal statement. Both parties made additional oral comments on the costs application at the hearing.

The submissions for the appellants

3. In summary, the appellants say in writing that the Council has wasted their time and money both in the pre-application stage and during the application process and that the Council has acted unreasonably. It should have been a simple application. An existing D1 use has operated without issue and other D1 uses would have the same impact. The transport statement did not appear to have been read. The Council gave conflicting and poor advice throughout the whole process which constitutes unreasonable behaviour.
 4. At the hearing the appellants added that if I decide that the case cannot be dealt with under s73 of the Town and Country Planning Act, it would strengthen the costs application. The Council only advised at the end of the application process that this was its stance. The application was validated as an s73 application. The reasons for refusal on noise and disturbance are unproven.
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The response by Reading Borough Council

5. In summary, the Council's written response states that the application is not a simple application. The full implications of the existing permission were not fully thought through by the appellants before submission. The wrong type of application was submitted, the situation is too complex to have been captured by Planning Administration at the initial validation stage. The appellant is mistaken that any D1 use would be acceptable. Background detail and events are not relevant to the appeal. The Council's decision in the reasons for refusal is clear. The Highway Authority was asked to provide advice on a wide range of scenarios. Officers worked to determine the application positively and proactively.
6. At the hearing the Council added that at the pre-application stage it was advised that the existing use was a mixed use. The appellant's statement looked at planning issues rather than mechanics. It is accepted that guidance was inconsistent but that the Council sought to ensure there was no issue.

Reasons

7. Planning Policy Guidance advises that irrespective of the outcome of an 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.
8. The Council's reason for refusal sets out why it decided to refuse the application. On the matter of the application type, whilst the Council validated the application, officers subsequently came to the view that it was outside the scope of what could be considered through a s73 application. I accept the Council's argument that the application is not as simple as claimed by the appellant, though it does appear to have raised this issue late on in the application process.
9. Nevertheless, it does not appear to me that this would have avoided the appeal as the Council also raised objections on the planning merits of the proposal. Therefore, it is likely that the application would still have been refused, irrespective of the Council's point of view on whether the application could be considered under s73. Whilst it would have been more helpful for the Council to raise the matter of validity at an earlier stage, if not at the validation stage itself, I do not consider that this has resulted in unnecessary expense in the appeal process.
10. Whilst I appreciate that the advice received from the Council was taken in good faith, it is also a matter for the appellant to be satisfied that applications submitted are in accordance with the relevant regulations and procedures.
11. With regard to the uses considered in the planning application, there is some disagreement between the parties in respect of how the existing use should be classified. I have agreed with the Council that the previously authorised use represents a mixed-use and therefore, notwithstanding the restriction in condition 5 of the 2010 permission, it would not be possible to move between different uses within Class D1 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
12. Notwithstanding this and the findings in my appeal decision, I also consider that the Council was not being unreasonable in coming to its view that

alternative uses, which would otherwise fall into the same D1 classification as the physiotherapy use, are capable of having different impacts in certain circumstances. I do not therefore consider that the Council has behaved unreasonably in this respect.

13. Turning to highway matters, there is no persuasive evidence before me that the Council's highways officer had not read the appellant's transport statement. In this regard I note the memo written by the Transport Development Control Officer dated 17 December 2016 which sets out concerns on parking and highways grounds and notes that the applicant has undertaken extensive research to establish the operational practices of various other medical and healthcare services. This indicates to me that the transport statement had been read.
14. The Council's appeal statement is not particularly detailed in respect of evidencing its concerns regarding noise and disturbance. However, the Council made clear its view that the appellant has not demonstrated that other D1 Class uses would be acceptable in the context of the close relationship of the site with residential properties and notes that no noise assessment has been submitted. At the hearing the Council elaborated further on these matters and in the context of this appeal I do not find that it has failed to produce evidence to substantiate its objections.
15. I am aware from the appeal correspondence that matters regarding the way in which the Council dealt with the planning application have been dealt with through separate correspondence between the parties. It is clear that there was a delay in the Council's determination of the application and that certain advice given by different officers has been inconsistent. Nevertheless, it does not appear that even if the application was determined within a shorter time frame a different decision would have been reached and therefore an appeal would not have been avoided. Whilst there does appear to have been some differences of opinion between case officers I accept that this can be case when the relevant issues are a matter of judgement. On the balance of probability, I do not consider that the Council's behaviour in these respects has resulted in unnecessary costs being incurred during the appeal process.
16. I also note that the appellants state that they have lost two houses that they were seeking to move into as a result of the process. However, whilst I appreciate that may be as a consequence of the planning application not having been permitted, I do not consider it to be of direct relevance to my decision in this costs application.

Conclusion

17. I conclude that for the reasons set out above, on the balance of probability, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. An award of costs is therefore not justified.

David Cliff

INSPECTOR