The Planning Inspectorate

Costs Decision

Site visit made on 23 February 2017

by Claire Victory BA (Hons) BPl MRTPI

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

Decision date: 16 May 2017

Costs application in relation to Appeal Ref: APP/B5480/W/16/3163964 236 Main Road, Romford, Havering RM2 5HA

- 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 Trevor Howard for a full award of costs against the Council of the London Borough of Havering.
- The appeal was against the refusal of the Council to grant planning permission for the change of use of the ground floor of the premises from financial and professional (Use Class A2) to a micropub (Use Class A4).

Decision

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

Reasons

2. The applicant applied for a full award of costs in respect of the Council's two reasons for refusal, in relation to highway safety and living conditions. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process.

3. It is asserted that the Council did not address the photographic and traffic survey evidence submitted which demonstrated that there was sufficient capacity. A survey of available spaces undertaken in April 2015 and photographs taken on the same date were provided with the planning application. This was then supplemented at the appeal stage with a further more detailed survey of parked vehicles and available parking spaces both up to 200m away and within a 500m radius of the appeal site. Whilst the Council do not explicitly refer to the initial survey and photographic data in the officer report, it clearly sets out the Council's concern in this regard, with reference to development plan policies, and was informed by the expert view of the Council's Highways Department.

4. No on-street car parking is proposed in the appeal scheme, and thus visitors arriving by car would need to park in surrounding streets. The parking requirement would be up to a maximum of 7 spaces. I found that the additional parking demand could be accommodated satisfactorily within the vicinity. Moreover, paragraphs 10 and 11 of the Sunnyside appeal decision[1] confirm there would be no visitor car parking and patrons would need to travel

[1] Appeal Ref. APP/B5480/W/15/3130506

by public transport or find alternative parking in the immediate locality. In this respect the appeal is similar to the current proposal.

5. However, whilst I reached a contrary view to the Council on this matter, taking into account the additional evidence provided by the applicant at the appeal stage on parking capacity which was unrefuted by the Council, I consider the Council's view at the time of determining the application was properly substantiated. Furthermore, the pre-application advice provided without prejudice to its formal decision stated that highway safety and amenity issues would be considered in detail at the application stage. Consequently, the Council did not act unreasonably in relation to highway safety.

6. The Council has also confirmed that there was a typographical error in the Decision Notice which was corrected in the appeal statement. Whilst this was unfortunate I do not consider the Council acted unreasonably and in any case the applicant has addressed highway safety matters in their appeal submission. As such I do not consider this led to any unnecessary or wasted expense.

7. Turning to the matter of living conditions, the consultation response from the Council's Environmental Health team was not referred to in the officer report, and was only provided to the applicant on request. This stated that there was no objection subject to conditions relating to 'the control of noise emanating from the site' and a scheme for any new plant or machinery. While the Council consider these conditions would only deal with the control of noise from within the building itself, the appeal site includes the forecourt and thus activity in front of the premises would fall within the remit of the suggested conditions, and thus there would be scope to manage breakout noise through a Management Plan in this way to provide effective noise mitigation.

8. Although the officer report stated the combination of a concentration of Class A4 uses within the Major Local Centre, the proposed opening hours and the proximity to residential uses would have an unacceptable effect on residential amenity, the concentration of A4 uses was not referred to in the reason for refusal, and these concerns are not articulated in detail.

9. Moreover, concerns expressed about noise generated by patrons returning to their cars parked in the surrounding area are general in nature and there is nothing to indicate that this would cause material harm to neighbouring occupiers, taking into account the location of the unit within a Major Local Centre.

10. Taking all of the above into account, I conclude that the Council's first reason for refusal has been substantiated and therefore unreasonable behaviour leading to unnecessary or wasted expense in the appeal process on the part of the Council, as set out in the Guidance, has not been demonstrated in relation to highway safety.

11. However, the conclusion reached by the Council in relation to living conditions is unsupported by any objective analysis, and thus it failed to substantiate the second reason for refusal, leading the applicant to incur unnecessary or wasted expense in the appeal process. A partial award relating to the costs incurred by the applicant in defending arguments relating to this matter during the appeal is therefore appropriate.

Costs Order

12. 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 on that behalf, IT IS HEREBY ORDERED that The Council of the London Borough of Havering shall pay to Mr Trevor Howard the costs of the appeal proceedings described in the heading of the decision insofar as they relate to the second reason for refusal.

13. The applicant is now invited to submit to The Council of the London Borough of Havering, 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 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.

Claire Victory

INSPECTOR