
Costs Decision

Site visit made on 31 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 29th June 2017

Costs application in relation to Appeal Ref: APP/Z0116/W/17/3170050 85 Queens Road, Clifton, Bristol BS8 1QS

- 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 Marstons Estates for a full award of costs against Bristol City Council.
 - The appeal was against the refusal of planning permission *"for the extension of opening hours to 08000-2300 Monday-Thursday; 0800-midnight Fridays-Saturdays and 0800-2300 Sundays and Bank Holidays; external alterations to the shop front to create a new entrance from Queens Road, removal of 4 no plant condensers and replace with 3 no new plant condensers, installation of green wall and enlarged louvre opening"*.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
3. An award of costs is sought on substantive grounds. In summary, the applicant says that the Council did not properly assess the proposal against the National Planning Policy Framework (the Framework) in the decision making process. There is no evidence that the Council assessed the merits of the proposal or undertook a planning balance and it gave undue weight to the previous appeal decision¹. The Council has not supported its reasons for refusal at appeal with objective evidence. Refusal reason 2 was capable of being dealt with by a condition. Consequently, the Council has prevented or delayed development which should clearly be permitted.
4. In response, the Council say that it has not prevented or delayed development. The appeal site has an extant planning permission for use as a restaurant. The previous scheme to extend the restaurant opening times was dismissed at appeal and refusal of the current application is consistent with that decision. The PPG indicates that the costs regime does not extend to the application itself. The appellant has incurred costs preparing their appeal. However, the

¹ Reference APP/Z00116/A/14/2226079.

costs of a second noise assessment could have been avoided, as it was increased activity in general and increased numbers of people which the Council objected to. The second reason for refusal could have been dealt with by condition but was added as planning permission was being refused. Therefore, the Council considers that it has not acted unreasonably.

5. At paragraph 049, the PPG provides a (non-exhaustive) list of examples of when a Council might be at risk of an award of costs due to unreasonable behaviour concerning the substance of a case. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other considerations; failing to produce evidence to substantiate reasons for refusal at appeal; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis, and; refusing permission where conditions would enable the development to go ahead.
6. Planning permission was refused for two reasons. Reason 1 concerned the effect of the proposed extended opening times on the living conditions of nearby residential occupiers. In reaching that conclusion, the Council made extensive reference in the officer report to the previous appeal decision. However, that appeal concerned a proposal to extend the restaurant opening hours until 0200 on Fridays and Saturday mornings. Therefore, the current appeal, which involves a more limited extension to the opening times at weekends, but also with extended opening times in the week, is materially different to the previous scheme. The previous appeal is clearly a material consideration that carries some weight. Even so, the Council did not give any detailed explanation as to why it considered that the current scheme is materially similar to that decision, especially given the appellant's evidence on the background noise levels in the vicinity of the restaurant during the proposed extended opening hours. Consequently, it is hard to avoid the conclusion that the Council placed undue reliance on the previous appeal decision, as opposed to the individual merits of the latest application.
7. The Council did not raise a substantial challenge to the appellant's noise evidence submitted with the application or further evidence submitted with the appeal. It did not submit its own evidence on noise levels but instead has relied on more general matters, such as increased activity or the increased numbers of people. Whilst such factors might be indicators of harm, they would not necessarily cause harm in themselves. There has not been a meaningful attempt by the Council to quantify the likely scale of the alleged increases in noise and disturbance or to assess their impact on nearby residential occupiers in the context of their surroundings. Such impacts can only be properly understood by reference to the context; in this case, that means existing background noise levels from activity in the area.
8. I acknowledge that matters such as the impact of noise and disturbance can be subjective and that different parties may legitimately hold differing views. Provided they are supported by a body of objective evidence, parties holding those views should not be regarded as having acted unreasonably at appeal. Nevertheless, for the above reasons I find that the Council's first reason for refusal largely amounts to a generalised assertion of harm, which is not underpinned by any robust, site-specific analysis. Consequently, the reason does not withstand objective scrutiny and it lacks substance.

9. Moreover, there is little to suggest from the officer report and written statement that the Council assessed the proposal against the Development Plan as a whole as well as any other material considerations, including the Framework. In particular, there is no meaningful assessment of the benefits of the proposal and a balancing exercise undertaken of those benefits against the harm, as might be expected where the policies in the Development Plan and in the Framework pull in different directions. Consequently, I cannot be certain that the benefits were given proper weight in the Council's decision to refuse permission. The PPG advises that costs cannot be claimed for the period during the determination of the application. However, parties are still expected to behave reasonably and their behaviour at the application stage can be taken into account². In this instance, the Council's approach in relation to the first refusal reason led directly to the appeal.
10. Refusal reason 2 concerned the effect of plant noise on nearby residential occupiers. I have some sympathy with the Council's position in this respect. Without reason 2, the Council would have been unable to defend the appeal by referring to this matter without risking an application for costs being made against it by the applicant, on procedural grounds. Even so, reason 2 cannot be looked at in isolation from the totality of the Council's decision to refuse planning permission. As reason 1 has not been substantiated at the appeal, it follows that reason 2 could have been dealt with by condition, had the proposal been permitted by the Council. Consequently, the development would otherwise have gone ahead, had the second reason for refusal not been added.
11. I accept that the restaurant could trade within its existing opening hours. However, it is entirely reasonable for the applicant to seek to extend their opening times prior to making a considerable investment in the appeal site. Accordingly, the above all leads me to the conclusion that the Council have prevented or delayed development which should clearly have been permitted.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated. The conditions in paragraph 030 of the PPG have therefore been met and a full award of costs is justified.

Costs Order

13. 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 Marstons Estates, 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.
14. The applicant is now invited to submit to Marstons Estates, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stephen Hawkins

INSPECTOR

² Paragraph: 033 Reference ID: 16-033-20140306