
Costs Decision

Site visit made on 5 June 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 5 July 2017

Costs application in relation to Appeal Ref: APP/V5570/W/17/3171820 74-76 St John Street, Islington, London EC1M 4DZ

- 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 David Rogers, Venaglass Haymarket Limited for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the refusal of planning permission for change of use of part ground floor, basement and lower basement from Use Class B8 (storage) to flexible commercial use within Use Classes A1/A2/A3/A4/B1/D1/D2) Use, replacement of ground floor façade and entrance doors and fenestration to enclose existing ramp.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and has thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Paragraph 49 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal or in relation to procedural matters.
 3. Examples of this, set out in paragraph 49 of the PPG and of relevance to the points raised by the appellant in the application for an award of costs include:
 - Preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations;
 - Failure to produce evidence to substantiate each reason for refusal on appeal;
 - Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - Refusing planning permission on a ground capable of being dealt with by conditions risks an award of costs where it is concluded that suitable conditions would enable the proposed development to go ahead.
 - Lack of co-operation with the other party; and
 - Delay in providing information or other failure to adhere to deadlines.
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4. The applicant considers that the Council has: misinterpreted planning policies; did not exercise a reasonable exercise of judgement as to the level of detail which was required to support the application; failed to consider the use of conditions; and did not allow insufficient time to respond to concerns before the determination date. I shall address these concerns under the main issues identified in my Decision.

Loss of Class B8 Floorspace

5. The applicant considers that the Council failed to recognise the clear evidence that the site is vacant, having been unsuccessfully marketed, and that it generates no employment or economic benefits and that the 'loss of business use' does not serve the underlying goals of the development plan policies which demonstrates an absence of reasonable judgement. In particular, the applicant considers that it failed to recognise that the proposed uses fall within the acceptable uses for the area and that the Council may exercise its judgment in its requirements of marketing evidence.
6. Whilst Policy BC8 address a wider range of employment generating uses, criterion A i of the Policy specifically refers to 'business use'. 'Business floorspace/building/development/uses' is defined in the glossary of the Council's Development Plan (DMP) as activities or uses that fall within the B-Use Class (i.e. offices, industry, or warehousing). Furthermore, paragraph 3.47 of the Core Strategy explains that in order to protect a variety of spaces the Core Strategy protects specific types of business floor space where appropriate within the more general definition of employment floor space. Criterion A of Policy BC8 seeks to protect business floor space as part of a balanced mix of uses. Consequently, I consider that the Council has correctly interpreted the policy.
7. The marketing evidence required to support the proposals, is set out clearly in Policy BC8 of the FLP and Appendix 11 of the DMP. The Council considered that the proposal did not meet those requirements and that there was insufficient evidence to justify the loss of business floorspace. Even taking into account the additional evidence submitted in final comments to support the appeal, it can be seen from my Decision that I agree with the Council.
8. The Council's reason for refusal is complete, precise, and relevant to the proposed development and clearly identifies the relevant development plan policies. The Council has not acted unreasonably in this matter.

Vitality and Viability of Town Centres

9. The applicant considers that the Council misinterpreted Policy DM4.4 and that the Policy states that most proposals for retail, leisure and assembly uses in the Central Activities Zone (CAZ) are unlikely to result in detrimental impacts and that a more flexible approach should be adopted. He also suggests that the Policy does not require sequential assessments for proposals within the CAZ.
10. Paragraph 4.27 of the DMP states that the Council recognises that most proposals involving these uses (retail, services, entertainment, assembly and leisure uses), especially those of a small scale, are unlikely to result in detrimental impacts. The Policy sets a threshold of 80m² of floor space, which in Policy DM4.1 of the DMP is deemed to be a 'small and independent shop'.

Paragraph 4.27 indicates that the Policy takes a flexible, judgement based approach with a full impact assessment only being required where a proposal may have a potentially adverse impact on one or more designated Town Centres. The proposal is for significantly above the threshold set out in the Policy and could accommodate an express style supermarket.

11. Criterion i of Part B of the Policy requires applications for such uses over 80m² to demonstrate that the development would not individually or cumulatively with other development, have a detrimental impact on the vitality and viability of Town Centres within Islington or adjacent boroughs or prejudice the prospect for further investment needed to safeguard their vitality and viability. Given the scale of the proposal, the Council exercised reasonable judgement in this matter. Indeed it will be seen from my Decision that I consider that a quantitative assessment would be required to support the proposal.
12. There is dispute between the parties as to whether a sequential test is required to support the proposal. However, in the absence of a quantitative retail assessment, the Council would not have been able to assess the effect on the vitality and viability of Angel Town Centre in any event. In the absence of the quantitative assessment, the outcome would have been the same.
13. The Council's reason for refusal is complete, precise, and relevant to the proposed development and clearly identifies the relevant development plan policies. The Council has not acted unreasonably in this matter.

Living conditions of existing residents

14. The applicant considers that the Council's concerns regarding the potential effects of the proposal on neighbouring residents could have been overcome by the use of conditions. The National Planning Policy Framework (the Framework) requires local planning authorities to consider whether otherwise unacceptable development could be made acceptable through the use of conditions.
15. The range of flexible uses sought would permit occupiers such as cafes, restaurants, concert halls, dance halls, gymnasium and indoor sports or recreation. Such a range of uses could lead to potential noise, disturbance or odour for the occupiers of surrounding residential uses. Due to the flexible nature of the proposal there were no details before the Council relating to the proposed opening hours operation and servicing, likely levels of noise or disturbance; likely levels of traffic generated; potential parking requirements etc. Whilst I have considered that these matters could be addressed by way of conditions, the matter is finely balanced. The Council were not, therefore, unreasonable to reach this conclusion.
16. The Council's reason for refusal is complete, precise, and relevant to the proposed development and clearly identifies the relevant development plan policies. The Council has not acted unreasonably in this matter.

Insufficient time allowed to respond to officer's concerns

17. The applicant considers that the Council allowed insufficient time to respond to concerns before the determination date. The Planning Inspectorate's Procedural Guide for Planning Appeals in England States that applicants should be provided with sufficient time to address the Council's concerns and should be allowed to amend the application in light of these concerns.

18. I note that the email from the Council setting out the officers concerns was received 30 January 2017 and that the application was refused on 6 February 2017. Whilst I acknowledge that this is a short period of time it was, nevertheless, only 5 days after the site visit had taken place at which the planning officer would have had the opportunity to assess the potential implications.
19. I also note that the applicant did not utilise the Council's pre-application service which would have been an opportunity for the Council to raise any concerns. Although it is not compulsory, in light of the scale of the application and the flexible range of uses sought it is perhaps surprising that the service was not utilised. The aim of pre-application advice is to avoid abortive applications where there is an in principle objection in terms of adopted policy and guidance. Had the applicant utilised this service they would have been well-informed of the Council's in principle objections to the application. Furthermore there is no statutory requirement for the Council to accept revisions on an application.
20. It is clear that substantial amendments and/or additional evidence would have been required to make the proposal acceptable, which may have required public re-consultation of the application. The applicant was offered the opportunity to withdraw the application prior to determination and resubmit it in an amended form, without any additional cost; however, they declined to do so. Consequently, the Council did not act unreasonably in this regard.
21. I have, therefore, concluded that the Council has not acted unreasonably. In these circumstances, it is not necessary to consider the question of any expense incurred. Since unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, the application cannot succeed.

Caroline Mulloy

INSPECTOR