



Costs Decision

Site visit made on 17 July 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date:

Costs application in relation to Appeal Ref: APP/J3015/W/17/3171435 9 Lime Grove, Stapleford, Nottingham NG9 7GF

- 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 Christopher Nettleton for a full award of costs against Broxtowe Borough Council.
 - The appeal was against the refusal of planning permission for the change of use of a domestic residential garage to a microbrewery producing up to 10 hectolitres a week of beer.
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Decision

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

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The application for an award of costs is made on both procedural and substantive grounds. Procedurally, it is argued that the Council has acted unreasonably by deliberately concealing the representation made by the Town Council by not referring to them in the Officer's Report or submitting them with the appeal documentation. It is also argued therefore that they have failed to adhere to deadlines. The PPG indicates that, in such circumstances, a procedural award of costs may be awarded against an authority.
4. The Council have accepted that administrative errors did result in the failure to report, either in writing or verbally, the representation from the Town Council to the Committee determining the planning application. A further error meant that the representation was not submitted with the other representations at appeal stage. However, they have indicated that this was accidental and not a deliberate attempt to conceal it, and as soon as they were made aware of the error they took swift action to rectify it.
5. To this end, for two reasons, I am inclined to accept that this was an administrative error rather than any deliberate attempt to conceal evidence. Firstly, the Town Council objected to the proposal, and as such their representation supports the Council's decision to refuse the scheme, rather than supporting the appellant's case. Consequently, it was in the Council's best interest to ensure that the representation was not concealed. Secondly,

the Council's appeal statement refers to the objection from the Town Council, which would not be the case if they were deliberately seeking to conceal it. I note too that at the final comments stage the appellant accepted that the Council's actions were not deliberate.

6. This administrative error is unfortunate, but there is no evidence to indicate that this led to any significant delays in the appeal process. The appellant was still able to submit their final comments within the normal timescale, and this stage provided the opportunity to make observations, as necessary, on these comments. Moreover, the comments made by the Town Council were similar to those made by other objectors, and there is no indication that any significant extra work was required to address these comments. Therefore in this regard, I do not consider that the Council's behaviour represents the kind of unreasonable behaviour envisaged by the PPG as giving rise to a procedural award of costs, and that the appellant has not suffered significant unnecessary expense.
7. In terms of the substantive grounds for the award of costs, the applicant claims that by failing to produce evidence to substantiate the reason for refusal, and by relying on vague and generalised assertions which are unsupported by any objective analysis, the Council has acted unreasonably. In particular, the applicant has highlighted that the members of the Committee determining the application did not accept the recommendations of its Officers to grant permission.
8. As detailed in my decision letter, I have found that the change of use would not have a detrimental impact on the living conditions of nearby residents. However, I have reached this decision on the basis of the evidence before me which includes a noise and a traffic assessment, and it appears that neither of these technical assessments were available to the Council at the time they made their decision. In addition, whilst at appeal stage there were a number of letters of support from local residents, when the application was determined there were only letters of objection, which highlighted concerns regarding noise, odour and traffic.
9. Although Officers supported the application, their report indicates that they had concerns over the potential impact on living conditions of nearby residents which is why they recommended it was only allowed for a temporary period in the first instance.
10. I understand that members of the Committee visited the site before making their decision, and so were able to assess the locational characteristics of the site for themselves. The Council's appeal statement highlights that the reason for refusal did rely on what the members saw at their site visit, their local knowledge, and the views of the local residents, who had first-hand experience of living close to the brewery over the period it had been operational. These are all valid material considerations, especially given the lack of any technical assessment.
11. In the absence of any specific technical assessments, I consider that members were entitled in reaching their decision, to give greater weight to their own judgement, informed by the views of local members and residents, than to the views of Officers. As such, on the basis of the evidence before them, I do not consider that the Council have acted unreasonably in refusing the application.

12. The technical assessments produced at appeal stage directly address the reasons for refusal, and together with the letters of support from local residents were important material considerations in my determination of the appeal. Therefore the production of these assessments does not represent unnecessary, or wasted, expense in the appeal process.
13. In conclusion, although I have found against the Council in this case, in the absence of the letters of support from local residents and the technical assessments available at appeal stage, I do not consider that the Council has acted unreasonably in coming to a different conclusion. Therefore I am satisfied that the Council has substantiated the reason for their decision adequately. Consequently, I find that unreasonable behaviour resulting in unnecessary, or wasted, expense, as described in the PPG, has not been demonstrated, and thus an award of costs is not justified.

Alison Partington

INSPECTOR