
Costs Decision

Hearing held on 7 June 2017

Site visits made on 6 and 7 June 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 28 July 2017

Costs application in relation to Appeal Ref: APP/Y3940/W/17/3166946 Former Griffin and Fudge Premises, Whiteheads Lane, Bradford on Avon, Wiltshire BA15 1JU

- 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 Juniper Homes (South West) Ltd for a full award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for redevelopment of site including demolition of workshop and erection of 6 dwellings; conversion and extension of office building to provide 2 apartments and 1 B1a office unit with associated ancillary works.
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Decision

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

The submissions

2. The appellant's case and the Council's response were made in writing prior to the hearing. Both main parties were given the opportunity to make further comments at the hearing but did not wish to add to their written submissions.

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.¹
4. The applicant alleges that the Council acted unreasonably in refusing the application on the basis of loss of employment land. It is argued that a strong case was made justifying the loss of the majority of the site for employment use.
5. The applicant refers to the fact that the site had been vacant for some time. The submission suggests approximately 12 years although the evidence presented at the hearing indicated a period of about 7 years. It also refers to the various constraints of the site in relation to its location, access, the condition of existing buildings and its proximity to residential uses, arguing that there was not a realistic prospect of employment re-use. These issues are dealt with in more detail within the main appeal decision.

¹ Paragraph: 030 Reference ID: 16-030-20140306

6. The Council Officer's report assessing the application acknowledged the constraints of the site and the period of vacancy. However, planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.² Policies CP7 and CP35 of the Wiltshire Core Strategy³ clearly seek to protect employment land in Bradford on Avon unless a compelling case can be made to demonstrate that a site is unsuitable for any employment use. Therefore, it was appropriate for the Council to assess whether the detailed policy criteria had been met to justify an exception being made.
7. Whilst I ultimately found in favour of the applicant on the issue, the Council Officer's report contains a reasoned and detailed assessment. Even if the Council accepted that it could not demonstrate a 5-year Housing Land Supply at the time of their original decision, that would not mean that development plan policies carried no weight, whether they were considered relevant policies in terms of housing supply or not. It would still have been a matter for the decision maker to consider the weight to be given to them depending on factors such as their consistency with the National Planning Policy Framework.
8. With regard to the first marketing exercise, the Council considered legitimate points about the appropriateness of the price and the suitability of the agent to market a commercial site, along with the time that had elapsed. Alder King, who marketed the site more recently, appeared to accept that the previous marketed price was not commercially realistic.
9. The second period of marketing carried out by Alder King was for 6 to 7 months leading up to the planning application. Policy CP35 of the WCS says that it must be shown that the site has remained unsold or unlet for a substantial period of at least 6 months. Therefore, it was reasonable of the Council to consider that the period had only just met the minimum requirement.
10. Furthermore, policy CP35 says that attempts to sell or let must be genuine and sustained. Concerns had been expressed by third parties about the integrity of that marketing. The applicant says that the Council had no basis for believing those third party reports. However, one of those third parties had provided an email from Alder King, referred to in the Officer's report, which stated that the site was unavailable at that point. It is reasonable for the Council to have considered representations made by the public during the planning process and to have analysed the marketing exercise.
11. Furthermore, contrary to the suggestion in the applicant's submission, the Council did take steps to verify those concerns. It contacted the agent anonymously and, according to the officer, was informed that the property was not currently available. The applicant would also have had the opportunity to comment on those aspects prior to the determination of the original application.
12. The applicant also suggests that, if the Council had not pursued the first reason for refusal regarding employment use, the second reason for refusal, concerning living conditions, would not have justified refusal or could have been resolved. The effect of the proposal on living conditions is also a matter

² s38(6) Planning and Compulsory Purchase Act 2004 and s70(2) Town and Country Planning Act 1990

³ Adopted January 2015

of planning judgement, and it would have been possible for the application to have been refused on that ground alone, in principle. Therefore, I do not accept the proposition that if the employment land issue had been accepted, the living conditions issue would necessarily have fallen away.

13. Overall therefore, whilst I have fully considered the applicant's submission, I am not persuaded that the Council has acted unreasonably. As such, I do not agree that the applicant was put to unnecessary or wasted expense.

Conclusion

14. I therefore find, for the reasons set out above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, no award is made.

Jonathan Tudor

INSPECTOR