The Planning Inspectorate

Costs Decision

Hearing Held on 27 April 2017

Site visit made on 27 April 2017

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 18th August 2017

Costs application in relation to Appeal Ref: APP/W3520/W/16/3162299 Thurston Park, Church Road, Thurston IP31 3RN

- 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 Dalton, Smart Garden Offices for a full award of costs against Mid Suffolk District Council.
- The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for change of use of horticultural buildings and yard to manufacture, store and sell portable garden buildings, fencing and ancillary equipment without complying with conditions attached to planning permission Ref 0878/97, dated 12 February 1998.

Decision

1. The application for a full award of costs is refused.

Procedural Matter

2. The appellant's application for an award of costs is dated 26 April 2017. However, I did not accept applications for costs at the sitting as late evidence was submitted and I concluded it would be appropriate to defer costs applications until after the re-consultation period.

3. In the event, a further sitting was not needed and I considered it appropriate to determine costs applications under the procedure for written representations. This approach had been discussed and agreed with the main parties at the site visit. The costs application before me was received at the Planning Inspectorate 25 July 2017. Although it makes reference to the right to add or amend the application through oral submission, the appellant was aware when this was submitted that there would be no opportunity for oral submissions.

Reasons

4. Paragraph 030[1] of the *National Planning Practice Guidance* (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

[1] Reference ID: 16-030-20140306

5. Paragraph 049[2] of the PPG explains that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to the substance of the matter under appeal, for example by preventing or delaying development which should clearly be permitted having regard to the development plan and other material considerations, by failure to produce evidence to substantiate the reasons for refusal, and by giving vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis.

6. The appellant applied for the variation of conditions attached to an existing planning permission, in order to extend operational hours at the premises which manufactures high-value garden offices. The application was a response to the initiation of enforcement action following complaints from residents of nearby dwellings.

7. The Council refused the application for two reasons, the effect of the noise and disturbance on the living conditions of nearby residents, and the effect of one acoustic fence on the character and appearance of the area. In addition, having reviewed the evidence from interested parties I considered it appropriate to consider the effect of the aforementioned acoustic fence on the living conditions of Cherry Trees, with regard to light and outlook.

8. The appellant argued that the Council acted unreasonably in respect of the issue of a refusal notice when there was an opportunity to resolve issues, the inconsistent treatment of technical material, failure to produce technical evidence to support its objection, refusal on grounds capable of being dealt with by condition, failure to consider the economic dimensions of refusal, not agreeing the Statement of Case (SOC) in a timely manner and late withdrawal of one reason for refusal.

Issue of refusal notice without opportunity to resolve issues

9. The appellant suggested amendments to the 4.5 metre acoustic fence in an email to the Council[3] during the determination period. It is clear from the email's content that the appellant is referring to the 3.5 metre acoustic fence and is suggesting ways in which its appearance might be more readily assimilated into the area. However, the noise report accompanying the application noted that mitigation alongside Cherry Trees, where the 3.5 metre fence is proposed, would be only partly addressed by the fence. It is also clear that the Council considered the proposed layout and length of the 3.5 metre fence was insufficient.

10. I do not have evidence before me to indicate whether the Council raised all their other concerns with the appellant. However, amendments to the fence's appearance would not have resolved the Council's concerns. Furthermore, amendments to layout alongside Cherry Trees without a further consultation period could have prejudiced the interests of Cherry Trees' occupiers.

11. The noise consultant did not provide amended evidence in respect of an extended 3.5 metre fence until April 2017. As such, I conclude that the Council has not acted unreasonably in this respect and was unable to act collaboratively either because it did not have relevant information, or because there was a risk to the interests of other parties.

[2] Reference ID: 16-049-20140306
[3] Statement of Case, Appendix 3

Failure to produce technical evidence to support objection

12. The Council's Environmental Health's (EH) consultation response noted the findings of the noise report. The planning officer concluded that requirements such as drivers driving lorries with care and keeping to a speed limit, specifying the type and make of lorry used, and keeping factory doors closed, identified by EH as forming the basis of such conditions, would be difficult to monitor and enforce.

13. As such, I do not consider it unreasonable for the officer to conclude that noise should remain a determinative issue. Furthermore, it is not the responsibility of the Council to provide technical evidence but to provide substantiation of their objections. The Council used the noise report to inform their reasoning, as have I.

Refusal of an application on grounds capable of being dealt with by condition, late withdrawal of an element of the Council's objection

14. The noise report states that in respect of the use of powered machinery in Building 2, there would be two elements to the mitigation, keeping the doors closed and a 4.5 metre fence. Although the Council's EH team stated that this would provide adequate mitigation, the planning officer concluded that enforcement of a condition to keep the doors closed would prove problematic. This is a planning judgement, irrespective of the views of consultees.

15. The appellant argues that the Council is able to take enforcement action if conditions are breached. However, this application and appeal have arisen because the appellant has failed to respect existing conditions and in my reasoning I have concluded that I am not satisfied that conditions restricting the opening and closing of doors would be either reasonable or enforceable.

16. I am not aware that the Council formally withdrew their objection in relation to the 4.5 metre fence on the morning of the hearing as the appellant suggests. In any case, even if this reason had been withdrawn by the Council it would have been necessary for the appellant to address similar concerns from interested parties.

Failure to consider the economic dimension of sustainable development

17. The appellant argues that there is a severe risk to the business if the appeal is dismissed. However, the appellant purchased a business that had existing planning conditions on its operating hours. The appellant then developed a different business that requires longer operating hours in order to be profitable.

18. I appreciate that the delegated report provides only a brief overview of the business benefits of the application, but nonetheless, it is considered. The report concludes that support for the business sector has to be balanced against an improvement in the conditions in which people live. This is further amplified in the Council's statement. I acknowledge that the appellant may disagree with the weight the Council gives to the living conditions of nearby residents and the character and appearance of the area, but I am unable to conclude that the Council failed to give the economic dimension consideration.

Statement of Common Ground

19. A draft Statement of Common Ground (SOC) was submitted to the Inspectorate in early November 2016. This confirms matters not agreed, including the contents, conclusions and recommendations of the noise report submitted with the application. As outlined above, the appellant also sent a letter to the Council in October 2016 which the appellant considered might have addressed at least some of the officer's concerns. I concur that although the additional information is not referenced there is nothing in the evidence before me to indicate that the Council responded to this letter.

20. However, as noted above, additional noise evidence was not submitted until April 2017. As such I conclude that the October 2016 letter did not include this additional noise information. Consequently, the evidence before me does not support the appellant's case that the Council acted unreasonably in not agreeing the SOC. Those issues stated as *matters not agreed* were the issues outstanding on the morning of the hearing and which I have considered determinative in my reasoning.

Inconsistent treatment of technical material

21. The appellant argues that the Council has considered the same technical material for another application on this site and accepted its content. However, although this gave permission for the use of one building, the existing condition in respect of operating hours was retained. Consequently, I give this argument little weight.

Conclusion

22. In the light of the above I do not find that the Council has acted unreasonably, and nor do I consider there has been wasted expense. I therefore find that unreasonable behaviour resulting in wasted expense, as described in the PPG, has not been demonstrated. A full award of costs is not justified.

Amanda Blicq

INSPECTOR