
Costs Decision

Site visit made on 6 December 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 03 January 2018

Costs application in relation to Appeal Ref: APP/V5570/W/17/3181065 18 Brecknock Road, London N7 0DD

- 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 Mercedes Casto of ME Languages for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the grant subject to conditions of planning permission for use of the front ground floor unit as an educational institution (Use Class D1).
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Decision

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

Procedural Matter

2. I have taken into account the Government's Planning Practice Guidance (PPG), issued on 6 March 2014, in reaching my decision.

Reasons

3. The PPG advises that, irrespective of the outcome of the appeal, costs may only 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.
4. The applicant claims that the Council acted unreasonably in imposing a personal condition on a company whereby the business could be owned by different owners and put to a different purpose or function to that currently in operation, and still being in accordance with the condition. It is therefore claimed that the condition is unnecessary in this respect. It is further claimed not to be reasonable in light of the Council not providing any substantive evidence to justify imposing the condition.
5. I acknowledge that the Council determined the application having regard to relevant development plan policies. However, as I found in my appeal decision, that original condition 3 is inappropriate and does not fulfil its intended function due to it relating to a company, as opposed to a specific person only. The shares of that company could be transferred to other persons without affecting the legal personality of the company.
6. The Council refers to the loss of retail space not being justified on a permanent basis. It took account of the nature of the current occupier in terms of the vitality, viability and predominantly retail function of the Local Shopping Area (the LSA), albeit that insufficient vacancy and marketing evidence had been

provided relating to the unit prior to its current use. However, under the terms of the Council's decision the unit could continue in its current non-A1 use indefinitely and the Council found at the decision stage that it did not result in a harmful break in the continuity of retail frontages. Notwithstanding my findings that a general D1 use would be acceptable in this case, the Council has not provided evidence to indicate that the LSA would be any more likely to need an A1 use at the site in the future as it does now. The imposition of a restrictive condition in respect of this issue is therefore not clearly substantiated. The Council has also not provided any substantive evidence or analysis to explain why other D1 uses would not be likely to fulfil the same supportive function as the existing use in terms of the contribution to the mix and balance of uses within the LSA.

7. In respect of the issue of protecting the amenity of neighbouring occupiers, it is not properly explained by the Council why the use should be restricted in this respect, albeit that it refers to the opening hours and nature of the current use to be acceptable and that the retention of educational use was not considered to result in harmful noise disturbance to neighbouring residential occupiers. No analysis or evidence has been submitted to demonstrate that other D1 uses would be unacceptable in this respect in this particular case. Indeed I have found in my appeal decision that it is unlikely that any other D1 uses would cause a material increase in noise and disturbance at or in the vicinity of the site. There is also no substantive evidence submitted by the Council to indicate that the frontage design relating to any other D1 uses would be likely to be incompatible with the LSA location.
8. In conclusion, for the above reasons, neither the condition concerned nor one preventing any other D1 uses would be reasonable or necessary. Furthermore, the Council has not provided adequate substantiating evidence in support of any such restrictions. I therefore find that the Council behaved unreasonably in imposing condition 3 of the planning permission concerned and that, therefore, the applicant's costs in pursuing the appeal were unnecessarily incurred and wasted. For this reason, a full award of costs is justified.

Costs Order

9. 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 the Council of the London Borough of Islington shall pay to Mercedes Casto of ME Languages 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.
10. Mercedes Casto of ME Languages is now invited to submit to the Council of the London Borough of Islington, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Dawe

INSPECTOR