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## Costs Decision

Site visit made on 21 March 2018

**by Neil Pope BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 April 2018**

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### **Costs application in relation to Appeal Ref: APP/Z0116/W/17/3180440 O and M Sheds, Welsh Back, Bristol, BS1 4SL.**

- 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 Tom Wilcox of Cordwell Property Group Limited for a full award of costs against Bristol City Council.
  - The appeal was against the refusal of planning permission for the retention and repair of the two historic buildings O and M sheds, including reconstruction of the northern gable wall of O shed, provision of new roofs and associated surrounding landscaping for the purpose of providing three new quality restaurants and outdoor seating area.
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### **Decision**

1. The application is allowed in the terms set out below.

### **Reasons**

2. The Planning Practice Guidance advises that 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.
3. The aims of the costs regime include encouraging local planning authorities to properly exercise their development management responsibilities, to only rely on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay.
4. Local planning authorities are not bound to accept the advice of their officers. However, evidence should be submitted to justify making a decision that is contrary to the professional advice that was given. Public opposition is not in itself sufficient grounds for withholding permission and evidence must be produced to substantiate each reason for refusal. Reasons for refusal must also be capable of 'standing alone' and be supported by cogent evidence.
5. Within the appeal decision I have found that the proposal would result in a slight adverse effect to the grade II listed harbour wall. This tends to support the Council's argument that it did not act irrationally in withholding permission.
6. However, as set out within the officer's report to committee, the less than substantial harm to this designated heritage asset and/or other assets (including the loss of a residential mooring from this part of the Floating Harbour identified by the Council) must be weighed with the public benefits of the appeal scheme. In refusing permission and in defending the appeal, little, if any, evidence was produced to demonstrate why these benefits were deemed insufficient by the Council to outweigh the harm that it had identified. This supports the appellant's argument that the Council behaved unreasonably.

7. I also found that the proposal would have an adverse effect upon the living conditions of some neighbouring residents (the occupiers of the houseboat Ebenhaezer). Once again, this tends to support the Council's argument that it did not act irrationally in withholding permission on the basis of harm to residential amenity. However, little, if any, evidence was produced to demonstrate why this harm could not be addressed by way of suitably worded planning conditions as recommended by the Council's officers.
8. The appeal site is allocated for offices/workspace/leisure uses within the development plan and the Council has previously granted permission for a similar development on the site. Given the provisions of paragraph 187 of the National Planning Policy Framework, this is a site and a proposal where the Council should have been looking for solutions. Instead, it appears that the Council was unduly influenced by local opposition to the appeal scheme. There was also some internal inconsistency over its approach to moving Ebenhaezer.
9. In defending the costs application the Council has informed me that the decision to refuse permission was based on a combination of the three areas of concern it had identified and *"these matters are not considered to be of sufficient weight individually to warrant a refusal of planning permission, collectively when balanced in light of the public opposition, where (sic) considered substantive enough for Members to determine to refuse."*
10. Given the above, the Council acted unreasonably in refusing permission in the full knowledge that each reason for refusal was incapable of standing alone to the necessary scrutiny. It also acted unreasonably by failing to produce cogent evidence to substantiate its concerns and to explain why the use of suitably worded planning conditions would not address the harm that it had identified.
11. The Council's unreasonable behaviour delayed development that should reasonably have been permitted. This caused the appellant to incur the unnecessary expense of pursuing the matter to appeal.
12. Having regard to all other matters raised, I conclude that the application should succeed.

### **Costs Order**

13. 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 Bristol City Council shall pay to Mr Tom Wilcox of Cordwell Property Group Limited, the costs of the appeal proceedings described in the heading of this decision. Such costs shall be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Bristol City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Neil Pope*

Inspector