
Costs Decision

Site visit made on 26 June 2018

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

an Inspector appointed by the Secretary of State

Decision date: 20 July 2018

Costs application in relation to Appeal Ref: APP/Z0116/W/18/3194372 15 Small Street, Bristol BS1 1DE

- 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 Joe Baio (Midas Properties/G &E Baio Ltd) for a full award of costs against Bristol City Council.
 - The appeal was against the refusal of planning permission for change of use from bar, offices and residential, to 4 units of student accommodation and retained A4 unit.
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Decision

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

Reasons

2. 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
3. The applicant, referring to the PPG, submits that the Council has acted unreasonably by preventing or delaying development which should be permitted, having regard to its accordance with the development plan, national planning and any other material considerations. Furthermore, that the Council failed to produce evidence to substantiate each reason for refusal on appeal and made vague generalised or inaccurate assertions about the proposal's impact, unsupported by any objective analysis. The applicant holds that it has resulted in unnecessary expense in necessitating an appeal.
4. The PPG advises that where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party is unable to, or does not offer evidence to counter the case.² The Council has not responded to the costs application which adds weight to the applicant's case.
5. It is relevant that the Council decided not to follow the advice of its professional Officers who recommended that the proposal should be approved. Where an application is determined at a Committee, it is elected members who make the decision. Whilst the Committee is not bound to following the advice of Officers, if it reaches a different conclusion, that needs to be on clear planning grounds and substantiated through relevant analysis and evidence.

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

² Paragraph: 038 Reference ID: 16-038-20140306

6. It appears from the 'Minutes of the Development Control B Committee' meeting (the Minutes)³ and the content of the Council's Statement of Case (SoC) that the determination of the planning application was markedly influenced by the public controversy surrounding the removal of an historic ceiling, which took place during the course of the application process. As stated in the main appeal decision, regrettable though those actions may have been, the planning proposal needs to be determined in accordance with the development plan, unless material considerations indicated otherwise. Council Officers advised, correctly in my view, that as no breach of planning control or law had taken place, those issues needed to be separated from an objective assessment of the proposed development, as detailed in the application.
7. Four reasons for refusal were given by the Council, which I will take in turn, without repeating the more detailed discussion of them within the main appeal decision. The first expressed concerns about the loss of two residential flats and the effect on the choice of homes and housing mix by creating further student accommodation in the area. However, the relevant section within the Council's SoC did not discuss those issues. Rather it focussed, somewhat tangentially in the context of the decision notice, on the width of the access to the cycle storage and comments made in a consultation response by the Council's Highway Officer, which had already been considered in the original Council Officer's report.
8. Whilst policy DM2 of the Bristol Local Plan – Site Allocations and Development Management Policies (SADMP)⁴ does include reference to the adequacy of cycle storage, the Minutes do not suggest that cycle storage was an issue that led the Committee to refuse the proposal. The Council's SoC appears to be introducing a new reason for refusal. The PPG gives examples of the types of behaviour that may give rise to a procedural award of costs against a local planning authority, which include prolonging the proceedings by introducing a new reason for refusal.⁵ Whilst it has not prolonged proceedings in this case, the issue could have been reasonably addressed by means of an appropriate condition. Refusing planning permission on a planning ground capable of being dealt with by conditions also risks an award of costs, according to the PPG.⁶
9. Council Officers advised at the Development Control Committee meeting that local policy was supportive of the principle of student accommodation at the location. The content of SADMP policy DM2 and policy BCAP4 of the Bristol Local Plan – Bristol Central Area Plan (BCAP)⁷ confirm that. They recognise the demand for and support student accommodation within the city centre area, particularly in the Old City, which is described, in the supporting text to policy BCAP4, as having little or no existing residential population.
10. There are some exceptions referred to in the relevant policies, for example, if harm would be caused to the living conditions of surrounding occupiers, to the character of a residential area or to the general housing mix through an over concentration of student accommodation. However, no substantive evidence has been presented by the Council to demonstrate such effects or any clear conflict with the relevant development plan policies.

³ 20 December 2017

⁴ Adopted July 2014

⁵ Paragraph: 047 Reference ID: 16-047-20140306

⁶ Paragraph: 049 Reference ID: 16-049-20140306

⁷ Adopted March 2015

11. Moving on to the second reason for refusal, regarding the living conditions of future occupiers, the Minutes refer to discussion and queries, which appear to be in quite general terms, about space and access to natural light to enable students to study. Similarly, although the Council SoC expands on the discussion at committee and refers to specific rooms, the language, with reference to a 'cramped arrangement', 'awkward relationship', 'awkward shape', 'unusual positioning of windows' is rather vague and generalised and not supported by evidence identifying clearly harmful effects.
12. It fails to acknowledge that there will reasonably be some design constraints associated with the conversion of an existing building, more so when it is locally listed and within a conservation area. A bedroom is described as 'comparatively small' but it is not clear what the benchmark for such a comparison is. Ventilation and outlook are questioned, although such concerns are not recorded in the relevant reason for refusal.
13. The Council Officer's Report confirmed that there are no specific space standards applicable to student accommodation and that the development complied with standards relating to Houses in Multiple Occupation, which have similarities to student accommodation. The Officer's Report advised that *'All bedrooms and living areas would be served by existing windows, providing natural light and ventilation'*. The reasons for departing from the conclusions of the Council's professional officers are unsupported by detailed evidence or objective analysis.
14. The third reason for refusal specially refers to the effect on 'designated heritage assets'. However, given that the external appearance of the building is largely unchanged, save for the addition of solar panels on a flat roof to the rear, there is no reasonable basis to conclude that the character or appearance of the City and Queen Square Conservation Area (CQSCA) or the settings of adjacent listed buildings would be harmed. Council Officers advised at the committee meeting that there were *'considered to be no grounds for Officers to refuse the application on the basis of heritage impact.'*
15. Instead of explaining harm to 'designated heritage assets', as stated in the reason for refusal, the Council's SoC concentrates on the effect with regard to the interior of appeal building itself, a non-designated heritage asset. Comments from the Council's Conservation Officer in response to the appellant's Heritage Note are cited. However the Heritage Note had been superseded by subsequent changes to the proposal, including the retention of the double-height sash windows and ceiling joists in the rear block. The Council Officer's report states that amendments to the scheme had *'alleviated recommendation for refusal on heritage grounds.'* Whilst elected Members can take a different view, it needs to be substantiated by persuasive evidence.
16. The SoC sums up the Council's position on the issues by stating that: *'Members considered that the public benefits of the proposed development would not outweigh the harm caused to the building, contrary to Policy BCS22 (Conservation and the Historic Environment) of the Core Strategy and Policy DM31 of the Site Allocations and Development Management Policies.'* However, the building is a non-designated heritage asset. There is no clear explanation in the Council's various submissions of how the proposed development would harm the building or affected its significance, or how that would adversely affect the character or appearance of the CQSCA as a whole or

the settings of listed buildings. Therefore, neither the reason for refusal as stated, nor the alleged harm to the locally listed host building arising from the development proposal, have been substantiated.

17. The fourth reason for refusal indicated that the proposed access to the student accommodation failed to provide an adequately safe environment for future occupiers. Although the passageway is narrow, it is an existing access to residential flats above, and such accesses to accommodation on upper floors are said to be common in the city. A condition had already been agreed to ensure adequate lighting of the passageway.
18. The Council's SoC refers to increased use and vaguely suggests that '*more detail on this entrance and how it would be treated (at the end of the passageway) could have been explored and concerns addressed within the application material to demonstrate a safe environment.*' However, the Council could have requested further detail during the course of the planning application, if they considered that it was necessary. It is far from clear why the passageway was considered to be unsafe. Consequently, there is no substantive evidence to support supposed conflict with CS policy BCS21 or SADMP policy DM27.
19. Overall therefore, the Council has not produced evidence to substantiate each reason for refusal or explained how the development would fail to be in accordance with the development plan or national policy. Nor have material considerations been presented to justify a decision otherwise than in accordance with the development plan, notwithstanding the disquiet about works at the site which did not require planning consent and do not form part of the proposal. The Council's submissions have been vague, generalised and, at some points, confused.

Conclusion

20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

21. 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 Joe Baio (Midas Properties/G &E Baio Ltd), 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.
22. 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.

JP Tudor

INSPECTOR