



Costs Decision

Site visit made on 18 July 2019

by Gareth W Thomas BSc(Hons) MSc(Dist) PgDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2019

Costs application in relation to Appeal Ref: APP/Z0116/W/19/3220741 Units 3 to 4, Charnwood House, Marsh Road, Bristol BS3 2 NA

- 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 Visual Impact (Bristol) Ltd for a full award of costs against Bristol City Council.
 - The appeal was against a refusal to grant approval required under a development order.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs can be awarded against a party who has behaved unreasonably and thereby caused the costs applicant to incur unnecessary expense in the appeal process.
3. The applicant's case is substantive in nature. For substantive matters, the PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal, for example, by unreasonably refusing planning related applications, or by unreasonably defending appeals. Importantly, any unnecessary costs identified must relate to the appeal process.
4. The applicant believes that the respondent acted unreasonably on the basis that it prevented development that ought to have been approved having regard to the General Permitted Development Order (England) 2015 (as amended) (the 'GPDO'), by not having applied consistency on a previous occasion when it allowed the conversion of Unit 1 Charnwood House and setting aside the Council's principal advisor on pollution control matters following the submission of a Noise Impact Assessment. Furthermore, it is claimed that the Council provided no contrary evidence to substantiate its claims that the proposal would cause harm to living conditions relying instead on unfounded assumptions. Other schemes approved by the Council were also cited by the applicant in support of its claims that the respondent had applied an inconsistent approach.
5. In response, the Council believes that it followed the requirements of the GPDO that had been amended to consider issues of noise by the time that the appeal scheme had been submitted. Such consideration did not feature in the Prior

Approval consent for Unit 1 which had been assessed against the background of an earlier iteration of the GPDO. The Council explains that the views of the Pollution Control officer were considered, including the advice that the keeping of windows shut was the only way that the impacts to occupiers from noise could be controlled to a reasonable level. I note that there was a subtle difference in the interpretation of the noise mitigation recommendations of the applicant's Noise Impact Assessment with the Council finding that the NIA's findings relied on windows being fixed shut whilst the applicant opined that the mitigation involved providing windows that were sealed airtight and when sealed, alternative methods of ventilation would be provided. Although I agreed with the applicant that this was an acceptable form of noise control and that such arrangements had been supported on similar schemes elsewhere in Bristol, I did not find it an unreasonable approach for the Council to conclude that the keeping of windows shut could create oppressive living conditions for some people. The Council had also taken strength from a recent appeal decision for a similar proposal on an industrial estate in Bristol. I do not consider that it was necessary for the Council to have undertaken its own assessment and in any event it accepted the applicant's findings, including the effectiveness of the proposed mitigation.

6. As in all appeals, the onus is on each party to provide sufficient evidence. This is often costly. However, I find that the evidence submitted was commensurate with the degree of complexity of issues involved in this case. The areas of concern were properly laid out by the Council and it was incumbent on the applicant to demonstrate the case, which it did so with effectiveness. I do not believe however that the Council has been unreasonable in any regard.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated.

Gareth W Thomas

INSPECTOR