
Costs Decision

Site visit made on 9 October 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2019

Costs application in relation to Appeal Ref: APP/Z5630/W/19/3233428 Rescue House, 46 Oakcroft Road, Chessington KT9 1RH

- 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 M Lambert of National Rescue for a full award of costs against the Council of the Royal Borough of Kingston-upon-Thames.
 - The appeal was against the grant subject to conditions of planning permission for erection of 5 industrial/warehouse units, car parking and servicing and erection of a 3.2m high timber acoustic fence along part of the boundary.
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Decision

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

Reasons

2. The National Planning Practice Guidance (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.
3. PPG also provides examples of unreasonable behaviour by local planning authorities which include imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, failing to accept officers' or statutory consultees' advice without good planning reasons and preventing or delaying development that should have been permitted.
4. The application was with the Council for some months prior to permission being granted. I note the applicant's concerns over the level and content of the communication with the Council during the application process and I understand the sense of frustration which the delays might have caused. Nonetheless, the Council have explained to some extent the reasons for the delay in terms of the committee timetable. Moreover, while the Council did not ultimately agree with the applicant's comments regarding the conditions, there was an opportunity given during this time for a dialogue regarding those that the Council intended to impose.
5. I acknowledge the content of the emails between the applicant and the Council during the application process. While comments are made regarding the effect of the application on the previous approval, from the officer reports and appeal

submissions I find that the Council understood the status of the 1999 permission when approving the scheme subject to this appeal.

6. The condition relating to the use of the site outside of the specified hours was limited to a period of 12 months. There were no objections to the scheme from consultees such as the Environmental Health Officer. Nonetheless, the Council were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view. I disagreed with the Council and did not find that a trial run period was necessary. Nevertheless, given the history of complaints at the site and the findings of the noise impact assessment that there would be some increase in noise at second floor level, I find that the Council were not unreasonable in considering and imposing a temporary period.
7. The applicant has stated that pre-commencement conditions had been discharged for Unit E and provided reference numbers. Notwithstanding this, I do not have the full details of these submissions, including any decision on them. Therefore, I cannot be certain that the requirements of the conditions had been satisfied. Consequently, the need for conditions requesting such information is necessary and reasonable.
8. The requirement for the acoustic fence to be erected within a specified period, regardless of whether the night-time activities were taking place at the site, was unreasonable for the reasons stated in my decision. Furthermore, the requirement for details and works at other units at the site, that have not yet been constructed, within a specified period was also unreasonable.
9. The requirements of these conditions were necessary. However, the timescale for their submission, agreement and implementation did not relate to when effects from these other parts of the development would occur.
10. Although the applicant had not put forward an alternative timeframe this does not mean that the ones imposed were appropriate. Moreover, there was an opportunity for the Council to re-visit the wording of the originally imposed conditions and word them in a way that addressed the commencement of the development.
11. I find that the Council did behave unreasonably in regard to the time specified for details to be provided for the parts of the site yet to be developed and the requirement for the fence to be erected within a given time. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated. A partial award of costs, to cover the expense incurred by the applicant in contesting these aspects of the appeal is justified.

Costs Order

12. 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 Royal Borough of Kingston-upon-Thames shall pay to Mr M Lambert of National Rescue, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the time limiting elements of conditions 6, 8, 9, 10, 19, 20, 21 and 23 for the submission of details and for works to be carried out.

13. The applicant is now invited to submit to the Council of the Royal Borough of Kingston-upon-Thames, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stuart Willis

INSPECTOR