The Planning Inspectorate

Costs Decision

Site visit made on 28 October 2019

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

Costs application in relation to Appeal Ref: APP/U4610/W/19/3233806
Carpet Castle, Willenhall Lane, Coventry CV3 2EA

- 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 Matt Hands (SME Group Plc) for a full award of costs against Coventry City Council.
- The appeal was against the refusal of planning permission for 74 bedroom hotel with the demolition of existing vacant retail warehouse and offices.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party which has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.

3. The Council's requirements with regard to the provision and scope of sequential and impact tests were identified in its pre-application response to the appellant, with reference to the requirements of Policies R3 and R4 of the Coventry City Council Local Plan (the Local Plan). It is evident from that response that the Council's requirement for those tests to cover the city centre and all Major District Centres (MDCs), was based, in part, on its reservations as to whether the particular type of hotel proposed could be restricted by condition or other means.

4. It will be seen from my decision that I do not consider it necessary to restrict the type of hotel proposed, since its intended function is based on its particular location, which is fixed. However, the Council was not unreasonable in its reservations in that regard, or in taking the view that it consequently did with regard to the requirement for, and scope of, those assessments, as a matter of planning judgement and having regard to its development plan policies.

5. I have been referred to apparent inconsistencies between Policy R4 and the National Planning Policy Framework (the Framework) with regard to the impact test requirement. However, the weight to be attached to the Framework as a material consideration, and to the significance of any such inconsistencies as may exist between it and relevant development plan policies, are matters of planning judgement for the decision maker. On that basis, and having regard to its recently-examined and adopted development plan policy, the Council was

not unreasonable in reaching the view that it did with regard to the requirement for impact tests in this case.

6. It will be seen from my decision that I have reached a different conclusion to the Council with regard to the scope of the relevant tests. However, I am satisfied that the Council has adequately substantiated its requirement for those tests to also cover those other centres identified, with reference to its development plan policies with regard to the location of such uses. Therefore, notwithstanding the Council's somewhat limited comments on those sequential and impact tests which have been carried out, I conclude that its refusal of the application on the grounds that similar tests were not carried out for all of those centres was not unreasonable and, ultimately, has not led to an appeal which could otherwise have been avoided.

7. The Council's pre-application response related to an enquiry for a hotel or 25 new residential properties, and identified concerns regarding the future living environment only with reference to 'residential use'. Therefore, it is clear how the appellant inferred that the Council's concerns in that regard, and thus its request for a noise survey, related only to the proposal for 25 residential properties, and not to the current proposal for a hotel.

8. However, pre-application advice is given without prejudice to the formal decision of the Council on any subsequent application. During the course of the application itself, concerns were raised by the Council's environmental protection (EP) officer regarding the potential for the proposed hotel to be affected by noise from the surrounding industrial uses.

9. The Council's third reason for refusal refers to Local Plan Policies H3 and DE1. As those policies are aimed at new housing development and to guide matters of urban design, they are not directly relevant to the hotel use proposed, or to the Council's particular concerns that noise complaints from its guests could affect the ongoing operation of surrounding commercial and industrial uses. However, whilst not specifically addressing the relevance of those development plan policies referred to, the Council's submissions nonetheless clearly articulate its concerns in that regard, with reference to the nature of those specific surrounding uses and to the advice from its professional EP officer. The Council's submissions and reason for refusal also refer to the Framework and, specifically, to the requirement therein that development creates places with a high standard of amenity for future users. As a material consideration carrying significant weight, the Council was not unreasonable to rely on the Framework in refusing the application for the reasons it did.

10. It will be seen from my decision that I have reached a different conclusion on those matters, and on whether such issues could be adequately dealt with by conditions or at reserved matters stage. However, the Council has clearly articulated its concerns and substantiated its reason for refusal in that regard, and it was not unreasonable in coming to the conclusions it did, as a matter of planning judgement and with reference to the Framework.

11. The Council could perhaps have been clearer in its communication with the appellant regarding its noise survey requirement. However, even had it clarified its position regarding the development plan policies referred to, or requested further information at the application stage, I cannot be certain that its concerns would necessarily have been overcome or an appeal on those grounds avoided altogether. Furthermore, no further substantive evidence in the form

of a noise survey has been provided to address the Council's third reason for refusal. Therefore, and as the appeal would have proceeded on other grounds in any event, the appellant has not incurred significant or undue additional work or expense in providing the brief rebuttal on this matter in their appeal statement.

12. The questionnaire and associated documents were submitted late by the Council. However, its statement was provided on time and all documents attached to the questionnaire appear to have been publicly available. Therefore, the Council's failure to meet the relevant deadline has not prejudiced the appellant's ability to respond or led to delay in the appeal process, and does not amount to unreasonable behaviour in this instance.

13. Therefore, drawing those threads together, overall I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case.

Jillian Rann
INSPECTOR