
Costs Decision

Site visit made on 26 November 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2019

Costs application in relation to Appeal Ref: APP/R3650/W/19/3235306 1B Transform House, Unicorn Trading Estate, Haslemere, Surrey GU27 1DN

- 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 Patrick Brennan for a partial award of costs against Waverley Borough Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) for the change of use from use class B1a (office) to use class C3 (residential) use to provide 1 dwelling.
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Decision

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

Reasons

2. 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 expense in the appeal process.
3. The applicant considers that the Council failed to take account of the proposed mitigation measures in the noise exposure report he submitted with his application. Had they done so, his view is that they would have approved the proposal. Furthermore, they subsequently suggested he undertook a noise assessment to a standard not required for prior approval applications having permitted a similar application in the absence of this information. As a consequence, he has subsequently incurred professional fees¹ relating to additional unnecessary noise report work at the appeal site, and fees for a further application for prior approval. It is in relation to these aspects which his claim relates.
4. The PPG further advises that local planning authorities are required to behave reasonably in relation to the substance of the matter under appeal, and a list of examples is given including preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
5. In coming to its view to refuse his application the Council had regard to the views of the Environmental Health Team, whose Senior Technical Officer stated on 12 February 2019, *'Having reviewed the development proposal and supplied*

¹ Invoices from STM Environmental dated 20.3.19 & 29.5.19

information, it has been determined that noise from the established commercial units will cause an unacceptable adverse effect..’. It is reasonably clear from the Council’s Planning Officer report that this carried considerable weight in reaching the overall decision. However, the evidence² indicates that in making these comments the Senior Technical Officer had not had regard to the Noise Exposure Assessment submitted by the applicant, and I have not seen evidence to the contrary.

6. Given that the comments stated that the supplied information had been reviewed, and that the Noise Exposure Assessment was directly relevant to the matter under consideration by the Environmental Health Team, I consider that this does amount to unreasonable behaviour on the part of the Council.
7. Nevertheless, it does not follow that had the Environmental Health Team considered the report, the Council would have approved the application. The contents of the complaint notes indicate that upon reviewing the information the Senior Technical Officer had concerns regarding the noise assessment. Moreover, an assessment³ has been provided by the Council as part of their appeal statement which substantiates the Council’s concerns regarding noise. Furthermore, it will be seen from my decision, that notwithstanding the Noise Exposure Assessment, I found that there would be unacceptable harm to the living conditions of intended occupiers of the dwelling as a result of noise impact from commercial premises.
8. Therefore, the evidence does not show that had the Council taken proper account of the submitted information this would have led to a different outcome, thereby avoiding the need for an appeal or subsequent prior approval application.
9. Furthermore, costs can only be awarded in relation to unnecessary or wasted expense at the appeal. The noise information before me is a 9-page, Noise Exposure Assessment submitted with the original application which makes reference to BS8233:2014 ‘Sound insulation and noise reduction for buildings’. As such, it is not shown that the noise work referred to in the submitted invoices was incurred in relation to the appeal before me.
10. I am referred to a prior approval application⁴ for which, the applicant asserts, no noise assessment information was submitted but the Council nevertheless found to be acceptable. However, this related to a separate site some distance from the appeal site, with a markedly different context and therefore, attracts little weight. Hence, based on the limited information provided, this would not lead me to reach a different view regarding the case before me.
11. Consequently, although I accept that the Council were unreasonable in not taking proper account of the noise information submitted as part of the application, it does not follow that had they done so, they would inevitably have reached a different decision and the balance of evidence suggests otherwise. Accordingly, the applicant was not put to unnecessary or wasted expense in testing the matter at appeal.

² Complaint details WK/201810834 & Appendix 3 Council’s Appeal Statement

³ Appendix 3

⁴ Reference CR/2018/0024 62 Smithbrook Kilns, Cranleigh

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Helen O'Connor

Inspector