



Costs Decisions

Hearing Held on 26 November 2019

Site visit made on 26 November 2019

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12th December 2019

Costs application in relation to Appeal Ref: APP/C2741//W/19/3228547 The Punch Bowl, 5-9 Blossom Street, York, YO24 1AU

- 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 JD Wetherspoon plc for a full award of costs against City of York Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for two-storey and single-storey extensions with roof terrace following the demolition of existing single-storey rear extensions and fire escape.
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Costs application in relation to Appeal Ref: APP/C2741/ Y/19/3228548 The Punch Bowl, 5-9 Blossom Street, York, YO24 1AU

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by JD Wetherspoon plc for a full award of costs against City of York Council.
 - The hearing was against the refusal of listed building consent for internal and external alterations including demolition of rear extensions and fire escape, erection of two-storey and single-storey extensions with roof terrace, refurbishment of customer areas and relocation of customer toilets to first-floor.
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Decision

1. The applications for an award of costs are dismissed.

The submissions for Weatherspoon plc

2. The appellant contends that the Council acted unreasonably because they:
 - Failed to co-operate with the appellant during the application process, in particular failing to seek the views of the Conservation Officer for an alternative roof detail for the 2-storey extension and to engage in discussions;
 - Failed to provide relevant evidence during the application to the appellant, in particular email responses from colleagues in Environmental Health;
 - Sought to introduce fresh evidence at the appeal, in particular floor plans of the adjoining building;
 - Introduced new reasons for refusal, in particular concerns regarding the impact of elements of the scheme on the significance of the heritage asset;

- Misrepresented the response of the Environmental Health Officer and relied on vague and unsubstantiated assertions which were not backed up by technical evidence;
- Failed to co-operate to enable timely submission of the Statement of Common Ground.
- Relied on the wrong plans and policies in reaching a decision.

The response by City of York Council

3. The Council respond that:

- As the Inspector has a statutory obligation to consider all matters in relation to heritage assets it was appropriate to also raise additional areas of concerns, including the internal alterations, so that the Inspector could consider whether it was appropriate to deal with these matters by condition.
- It was not appropriate to consider an alternative scheme during the application, which could have been submitted as part of a pre-application advice service. Furthermore, the Council was not obstructive in relation to the supply of requested documents and other information.
- The errors made in the decision notice and officer report did not alter the substance of the Council's decision.

Reasons

4. Planning Practice Guidance advises that 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.
5. The appellant raises a range of concerns regarding the handling of the application and the Council's conduct during the appeal which I will deal with in turn below.
6. The reason for refusal refers to the impact of the proposed extensions on the significance of the heritage asset. The appellant argues that the Council introduced new reasons for refusal, in relation to the impacts of the proposal on the significance of the heritage asset. These related to internal alterations at first floor level. These matters are referred to in the officer report, where they are referred to in the context of comments made by the Conservation Officer. It is clear that the conservation officer is of the view that these matters could be subject to conditions, a matter which was clarified at the hearing. Having regard to the statutory duty to consider the impact on heritage assets within the Act, I consider it appropriate that the Council referred to these matters and do not consider that this inclusion in the discussion amounted to the introduction of new evidence. It is also clear that the appearance of the balustrade and beer garden on the roof of the first floor extension was a concern of the Council, which is implicit in its reference in the Decision Notice to the first floor extension.
7. The Council were clearly in error when they referred to the timber canopy and retractable awnings as part of the proposal. These were not part of the revised proposal, having been removed from the scheme. However, they were mentioned in the context of having a visual impact if the 2 storey element of

- the scheme were to be removed. As this was not the case, I do not consider the matter altered the Council's final considerations, and so the scheme would still have been refused. Furthermore, the error in relation to the inclusion of policy HE5 rather than HE3 made little difference to the Council's overall conclusions as the refusal also relied upon national policy in the Framework.
8. The Council submitted floor plans of Old Priory Court at the hearing to support their case in relation to the nature of the adjacent accommodation. These were plans that I had coincidentally requested prior to the hearing in order to inform my understanding of the site context during the discussion. The information within them could readily be observed during the site visit and so they did not constitute new evidence.
 9. The Council's refusal to consult internally on an alternative roof treatment appears to me to be entirely reasonable, given that the alternative was not considered to be an appropriate approach by the case officer and its substitution would not, in the event have altered the Council's decision. Furthermore, I have no persuasive evidence that the Council was actively obstructive in its consideration of the scheme. The Council are not obliged to share all informal discussions in order to demonstrate its reasoning and based on what I have heard I am not convinced that this amounted to the deliberate concealment of evidence. I accept that the sharing of personal information may have hampered the public availability of some internal correspondence and I note that where appropriate this has now been made available in any case. Should the appellant have concerns regarding the Council's conduct in this regard this is a matter for the Ombudsman.
 10. In relation to cooperation on the preparation of the Statement of Common Ground, this did not ultimately delay the determination of the appeal and so did not lead to any wasted expense.
 11. The issue in this case is more one of how the Council substantiated its case, particularly in relation to matters of noise. In this regard the Environmental Health Officer (EHO) stated that they considered the methodology adopted to be sound, but that the results were surprising, and that having regard to the nature of the use, they still had concerns in relation to the effects of the scheme on residential amenity. Having reached a similar conclusion myself I see nothing contradictory in this response. The errors in the EHO's initial response in terms of occupants and opening hours was not unreasonable given these were the hours stated in the noise report and did not ultimately undermine her reasoning.
 12. The report concludes that an acknowledged increase in noise from the beer garden will not have a material impact on adjoining residents. There is little information within the report to guide the reader as to how this conclusion has been reached and the report also fails to take account of a window which could provide a pathway for noise into the adjoining property. As such, I am satisfied that the Council was reasonable to also take account of the likely nature of the noise generating use and the character of the noise generated as well as the context of the site. Whilst this was briefly articulated, the Council did not leave the case unsubstantiated, and as I have reached a similar conclusion I do not consider they were unreasonable.
 13. It follows that the Council did not behave unreasonably and did not delay development which should clearly have been permitted, having regard to local

and national policy and any other material considerations. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Anne Jordan

INSPECTOR