



Costs Decision

Hearing Held on 5 November 2019

Site visit made on 5 November 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Costs application in relation to Appeal Ref: APP/F2360/W/19/3226232 42 Liverpool Road, Penwortham PR1 0DQ

- 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 Mrs Carole Rialas for a partial award of costs against South Ribble Borough Council.
 - The hearing was in connection with an appeal against the grant subject to conditions of planning permission to vary conditions Nos 8, 9, 10, 12 and 14 of planning permission Ref 07/2015/1854/FUL granted on 25 February 2016 for the conversion and extension of existing building to provide one Class A1/2 retail unit, one class A4 wine bar and formation of new vehicle delivery access off Liverpool Road.
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Decision

1. The application for a partial award of costs is refused.

The submissions for Mrs Carole Rialas

2. The appellant is making a partial application for costs in relation to the additional time taken to deal with additional points that ought not to have been made. There was a lack of coordinated thinking by the Council in relation to conditions 8 and 14, as local planning authority, licensing authority and the authority to deal with statutory nuisance. This is canvassed in a number of places in the Council's Statement of Case (SoC), that the Council did not appear to understand their duties and powers under each regime or how they related together.
3. The Council's Environmental Health Officer (EHO) doesn't acknowledge or comprehend their powers under the licensing regime. A Council submission says, at 8.2.14 *'It is the role of the Local Planning Authority in determination of the planning application to pre-empt potential noise issues whereas licensing would look at existing evidence of harm'*. This is incorrect due to the hierarchy of tests referenced during the hearing.
4. Paragraph 8.2.15 of the Council's Statement of Case states 'In planning, once the variation is granted, there would be no turning back'. This is predicated on the Council's belief that the two regimes have nothing to do with each other. Rather than the correct position that they are closely related and should be made to work together. The failure to grapple with that fact has caused the Council to impose the conditions. Had the Council considered this matter earlier it would have changed the Council's approach and curtailed the hearing. Comment was also made by the Planning Officer that different departments don't talk to each other. This comment was made in relation to the

Penwortham Live event, which the appellant asserts she was encouraged to participate in by a different department of the Council, despite restrictive conditions.

5. With regards to S73 there is a legal point. It wasn't lawful for the Council to seek to amend or enhance condition 8 by adding the requirements for the noise limiter. The point was clearly made in the appellant's SoC with reference to a legal opinion which had been taken by the appellant. The Council had the opportunity to take legal advice on this but failed to do so. The Council didn't address the issue at all. There was some extemporaneous consideration. The Council should not have imposed the requirement for the noise limiter.
6. The Council discussed this matter and considered it during the adjournment but should have had a position prior to the appeal. On that brief consideration they decided that the point was correct and that the condition needed amending again. They suggested deleting the last sentence or amending, neither of which is acceptable at a planning hearing. The Council concluded through Mr Whelan that it would delete the last sentence because it was unnecessary. This conclusion should have been reached long ago and would have saved time and effort in the appeal.

The response by South Ribble Borough Council

7. The Council stated that some prior notification of the costs claim would have been useful and pointed out that the appellant needs to find unreasonable behaviour as well as wasted expense. Regarding the alleged lack of coordination, it was asserted that the Council's position regarding licensing and the opportunity to review conditions has been misunderstood but planning conditions can't be amended. This doesn't mean that the Council is unaware of its duties in relation to licensing and planning.
8. The Council advised that generally, in an ideal world planning and licensing conditions would be aligned. However, there are differences between the licence and this application. These tensions do exist, they are separate regimes. The appeal must be determined in the context of planning law and legislation. The Council refutes the first part of the appellant's claim and asserts it is a sweeping statement which is not well founded.
9. With regard to the second point, regarding S73, the Council advised that it has more sympathy with the appellant on this point. The Council accepts that there has been a concession made (by the Council). However, the Council was not unreasonable in this regard. It's not uncommon for some parties to make concessions during a hearing. The Council queries what additional costs would have been incurred by the appellant in dealing with this point.
10. Different departments are aware of their powers, but the regimes shouldn't be conflated. The Council considers it has been reasonable to make the concessions that it has.

Reasons

11. The Planning Practice Guidance (PPG) 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. The PPG advises that the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were

no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.

12. The applicant's main argument is that the Council did not consider its powers under the licensing regime and as a consequence, included unnecessary conditions. However, from the evidence before me, and from the discussion at the hearing it is evident to me that this was taken into consideration and, in light of the advice contained within the PPG, which advises that local planning authorities should not presume that licence conditions will provide for noise management in all instances. Moreover, as set out within the appeal decision, I have found that, notwithstanding the provisions of the licensing regime, with respect to conditions 8, 9 and 14, that they are necessary. I therefore conclude that the Council was not unreasonable in this regard.
13. The PPG makes it clear that the original permission will continue to exist whatever the outcome of the application under section 73. It would therefore be possible for the applicant to revert back to the original permission in the event that the condition/s imposed by the Council were more onerous than the original. In addition, the condition was not sufficiently precise and did not enable the applicant to understand what was required to enable written consent to be given.
14. As such, I agree that the Council behaved unreasonably by amending condition 8 and as such, I have amended the wording of condition 8 to ensure that it would meet the tests. I have also agreed that Condition 10 should be amended. However, as the applicant needed to address the issue of potential harm arising from noise on the living conditions of the neighbouring occupiers through the appeal process, she was not put to unnecessary or wasted expense in seeking to address the reasons for imposing the conditions.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. The application for an award of costs is refused.

M Savage

INSPECTOR