



Costs Decision

Site visit made on 27 December 2019

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th December 2019

Costs application in relation to Appeal Ref: APP/J0540/W/19/3238406 The Fenman, Whittlesey Road, Stanground, Peterborough PE2 8RR

- 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 Alpha Kindergarten Stanground Ltd for a full award of costs against Peterborough City Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing public house and the erection of a new children's nursery (D1 use) with associated car parking and landscaping.
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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 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. Paragraph 49 of the PPG states that Local Planning Authorities are at risk of an award of costs where there is a "*failure to produce evidence to substantiate each reason for refusal on appeal*" or where there are "*vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis*" or "*not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management*".

Reason for refusal No 1 – air pollution

4. In this case, the Council did review the air pollution reason for refusal in respect of re-considering this matter again at the Planning Committee meeting which took place on 23 July 2019. I am satisfied that the Council did review its position quickly after the planning application was refused. In resolving not to defend the air pollution reason for refusal, this meant that it was not imperative for the appellant to deal with such a matter in pursuing the appeal. Whilst the appellant has referred to air pollution considerations in the accompanying appeal statement, this was not strictly necessary as the Council had made it clear that this was not a point of contention between the two main parties.

5. In respect of this reason for refusal, I am therefore satisfied that the Council has not acted unreasonably and in this regard its actions have not resulted in the appellant incurring unnecessary expense in the appeal process.

Reason for refusal No 2 – highway safety and traffic movements.

6. I have carefully considered the Council's case in terms of this main issue. In the context that there is an existing commercial use on the site; that there is no evidence of any historic adverse highway safety or traffic movement conditions in the locality, and the Highway Authority has not raised an objection to the proposal, the Council has not reasonably and objectively substantiated why it considers that the development would give rise to unacceptable highway safety impacts or that the residual cumulative impacts on the road network would be severe. Consequently, the Council has displayed unreasonable behaviour and the appellant has incurred unnecessary expense in the appeal process.

Reason for refusal No 3 – noise and disturbance

7. In this case, I am satisfied that the Council has reasonably substantiated its view that in relative terms the proposal would give rise to a more concentrated level of pedestrian and vehicular activity within the proposed car park (i.e. at peak times).
8. However, and given that a commercial use already exists on the site, I am not satisfied that the Council reasonably considered whether the imposition of planning conditions would reasonably deal with any noise/disturbance issues. I have concluded that subject to the imposition of a number of conditions, including the provision of acoustic boundary fencing and restricting the hours of use of the children's nursery, the occupiers of surrounding residential properties would be afforded an acceptable level of peace and quiet and hence that there would be no significant noise or disturbance effects.
9. It is of note that paragraph 049 of the PPG states that the type of behaviour which might result in a substantive award of costs against a local planning authority includes "*refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*". It is in this regard, that I find that the Council has acted unreasonably and therefore the appellant has incurred unnecessary and wasted expense in pursuing the appeal.

Conclusion

10. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part. Therefore, the application for an award of costs is partially allowed.

Costs Order

11. 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 Peterborough City Council shall pay to Alpha Kindergarten Stanground Ltd, the costs of the appeal proceedings limited to those costs incurred in respect of

preparing for and responding to matters relating to reason for refusal Nos 2 and 3 on the Council's refusal notice, such costs to be assessed in the Senior Courts Costs Centre if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

12. Alpha Kindergarten Stanground Ltd is now invited to submit to Peterborough City Council, 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.

D Hartley

INSPECTOR