



Costs Decision

Site visit made on 18 August 2020

by David Carter BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2020

Costs application in relation to Appeal Ref: APP/P4605/W/20/3252847 32 Hylton Street, Birmingham B18 6HN

- 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 T Hussain c/o Collins & Coward for a full award of costs against Birmingham City Council.
 - The appeal was against the refusal of prior approval under Class PA Change of Use from light industrial (Class B1(c)) to 6 residential units (Use Class 3C).
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Decision

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

Reasons

2. The 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.
3. The appellant's application for costs argues that it is untenable for the Council to refuse what was a fully supported second application following the previously stated concerns in respect of contamination and noise having been addressed by specialist consultants. They go on to state that the entire purpose of the resubmission was to avoid an appeal in relation to the first application.
4. In relation to contamination, the appellant suggests that any residual concerns should have been addressed by way of a condition. This was the outcome of an appeal into another scheme involving ground contamination in the London Borough of Brent (APP/T5150/W/17/3181861) where costs were also awarded.
5. On this particular matter, the Apple Environmental study concentrated on ground contamination. While the possibility of contamination to the fabric of the building was identified in the study report, there was no subsequent, substantive analysis relating to this. The reason for refusal for the first application referred to contamination generally, not just ground contamination. Therefore, in the particular circumstances of this case, I find that the cautious approach of the Council was appropriate and do not agree that the matter could have been adequately covered by condition.
6. In respect of noise, the issue relates to the introduction of a noise sensitive use in an industrial area. The appellant considers the Council's approach is unreasonable because the appeal proposal for residential use can co-exist with light industrial uses and, that the Council's concerns have been fully addressed in the report prepared by Sound Solutions.

7. I have identified several misgivings in relation to this, including a lack of specific investigation into the nature of nearby industrial activities. Accordingly, I conclude that the Council's approach towards this particular proposal in this established industrial and commercial area was both appropriate and proportionate.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

David Carter

INSPECTOR