
Costs Decisions

Inquiry Held on 10-13 November 2020

Site visit made on 8 December 2020

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 8 January 2021

Costs applications in relation to Appeal Ref: APP/Q3115/W/20/3249052 4 Market Place, Wallingford, OX10 0EH

- The applications are made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by South Oxfordshire District Council and the Corn Exchange for a full award of costs against AC Lester & Son Ltd.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of 20C additions to a listed building and alteration of the A1/A2 retail space to accommodate 8 no. new-build residential units and 9 no. car parking spaces, all accessed from the rear, off Wood Street.
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Costs applications in relation to Appeal Ref: APP/Q3115/Y/20/3249055 4 Market Place, Wallingford, OX10 0EH

- 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 South Oxfordshire District Council for a full award of costs against AC Lester & Son Ltd.
 - The inquiry was in connection with an appeal against refusal of listed building consent for the demolition of 20C additions to a listed building and alteration of the A1/A2 retail space to accommodate 8 no. new-build residential units and 9 no. car parking spaces, all accessed from the rear, off Wood Street..
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Decisions

1. The applications for full awards of costs are refused.

Procedural Matters

2. Two separate applications for costs were made by South Oxfordshire District Council and the Corn Exchange as a "Rule 6" Party at the Inquiry. I have dealt with these applications together.
3. The applications followed a written procedure following the close of the Inquiry, with a timetable set by myself at the event.

Reasons

4. 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. The PPG sets out types of behaviour which may give rise to an award.

Background

5. Planning permission and listed building consent were refused by the Council, having been recommended for approval by the Council Officers.
6. The Inquiry itself had two main issues relating to heritage and noise. Following a Case Management Conference, held on 27 August 2020, I asked for topic-based statements of common ground on these main issues in order to give greater focus at the Inquiry itself.
7. The Council's substantive claim for costs relates to noise matters, including a change to the representative noise position as agreed in the Acoustics Statement of Common Ground dated 1 October 2020 (ASOCG) and the knock-on implications this has had. The Council also consider that there is a lack of evidence in terms of mitigation proposals and a change of tack in terms of heritage evidence.
8. At the Inquiry, the Corn Exchange as a Rule 6 Party appeared in relation to noise matters only, and their costs claim is for the same reasons as the Council insofar as it relates to this matter. They also consider that there was a reliance at the Inquiry on earlier acoustic report submitted at application stage, which was agreed in the statement of common ground to have been superseded.
9. Both claimants consider that in light of the above, the appeals should not have been pursued and as such they would not have had to expend costs in mounting a defence.

Behaviour

10. It can be seen from my decisions that I found harm in terms of heritage. I also found harm in terms of noise, adopting a precautionary approach in terms of the mitigation.
11. Before and during the Inquiry, all three parties, through their expert witnesses, mounted a detailed case in terms of the main issues. The parties' respective positions on a number of the substantive matters naturally evolved during the appeal process, but that is to be expected on the basis of further work, and following my direction for focussed topic-based statements of common ground.
12. Moreover, concessions in respect of positions for noise and heritage were made during the Inquiry by all of the relevant parties, but such concessions were minor and would not amount to unreasonable behaviour.
13. Specifically, in terms of heritage, the appellant's position evolved from the original application and in minor cases during the Inquiry. The Council and the appellant disagreed in terms of the detailed level of harm for each asset, but there was broad agreement that the cumulative effects of the development would cause less than substantial harm overall which should be given great weight. Any minor concessions at the Inquiry for heritage do not amount to unreasonable behaviour in my view.
14. In terms of noise, and as referenced above, the appellant, the Council and the Corn Exchange produced an ASOCG. Matters contained within this document relate, in part, to tests which were conducted at the Corn Exchange on 28 May 2020.

15. Table 1 within the document sets out representative noise levels for live music on a sound system which is brought in for such events.¹ Separate tests of the in-house cinema also took place at that time. These are unreported in the ASOCG, however the appellant did use these as part of their case in the Inquiry, including in their Proof of Evidence.
16. Matters of agreement and disagreement are set out within the ASOCG, with the live music noise levels in Table 1 being agreed. Paragraph 4 under matters of disagreement clearly states that "*The appellant considers that more typical music noise levels should be the benchmark for design, rather than those set out in Table 1, and that these would still allow the Rule 6 party to operate without unreasonable restrictions and significant risk of complaints from the new residents at 4 Market Place.*"
17. It would have been helpful if the ASOCG set out the appellant's preferred figures relating to the in-house cinema system as a disputed matter. However, it is clear that while the values in Table 1 were agreed, substantial differences in terms of the typical operating circumstances and the frequency of live events at the Corn Exchange were disputed and it was not unreasonable for the appellant to have brought this matter up during the Inquiry.
18. Moreover, while I disagreed with the appellant that noise mitigation was a matter best dealt with by condition, I recognised that the use of conditions can be a legitimate means of making otherwise unacceptable development acceptable. Again, I therefore find no unreasonable behaviour in pursuing this line of argument in the Inquiry.
19. Both the noise levels/frequency matters and mitigation issues naturally led to debate on knock-on implications, including the unilateral undertaking and the Deed of Easement, and fallback position. I thus find that the appellant was not unreasonable in this regard as the matters were contained in the ASOCG as areas of disagreement.
20. Overall, I find there to be no unreasonable behaviour on the part of the appellant in relation to noise, and heritage. Even if I had found in favour of the Council and Corn Exchange on unreasonable behaviour relating to the change in position from ASOCG, the basis of their costs claims relate to the fact that the appeals should not have been pursued. There is no evidence before me to suggest that the appellant would not have sought to appeal the refusals. In both instances, therefore, there can be no question that the applicants were put to unnecessary or wasted expense.

Conclusion

21. I therefore conclude that, for the reasons set out above both of the costs applications fail.

C Searson

INSPECTOR

¹ Referenced in my decision as the 'Crescendo' system.