



Costs Decision

Site visit made on 18 April 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 5 June 2023

Costs application in relation to Appeal Ref: APP/E9505/W/22/3295628 Norfolk Garden Supplies, 54B Yarmouth Road, Thorpe St Andrew, Norwich NR7 0HE

- 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 Matthew Hales of Clean and Coat Ltd for a full award of costs against the Broads Authority.
- The application Ref BA/2022/0022/FUL, dated 15 December 2021, was approved on 25 March 2022 and planning permission was granted subject to conditions.
- The appeal was against the grant of planning permission subject to conditions for retention of buildings, canopy and hardstanding for use in association with car wash and conservatory sales and use of buildings for offices available to rent (10 desks).

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 explains that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive.
3. The applicant lodged an appeal against a condition imposed on planning permission Ref BA/2022/0022/FUL, alleging that condition 4 did not comply with the 6 tests found in the National Planning Policy Framework (the Framework). In this costs application, the applicant argues that the Council acted unreasonably in imposing the disputed condition, resulting in unnecessary expense for the applicant, because they have had to submit the appeal.
4. I appreciate that the Council corresponded with the applicant in order to gain an understanding of the proposed development and I note that the conditions were drafted based on discussions with the applicant on the likely make up of the future use of the site.
5. Nevertheless, decision-making authorities have a responsibility to independently and objectively scrutinise conditions against the 6 tests found in the Framework and the relevant legal duties. Paragraph 56 of the Framework requires that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning, and to the

development permitted, enforceable, precise and reasonable in all other respects.

6. In this regard, as explained in detail in my appeal decision, the part of condition No 4 that restricted the number of desks that could be rented out was not evidenced, reasonable in all respects or necessary, in terms of the effect on highway safety with particular regard to parking provision or the living conditions of the occupiers of the neighbouring dwelling in relation to noise and disturbance.
7. In addition, there was no agreement by the applicant to amend the description of development to limit the number of desks that could be rented out. This change to the description of development meant that regardless of the disputed condition, the development would still have been restricted in the same way as the condition was drafted to intend.
8. The disputed condition is therefore in conflict with paragraph 56 of the Framework, which the PPG identifies as an example of unreasonable behaviour with respect to the substance of the matter under appeal. As such, I consider that the Council's behaviour was unreasonable in imposing the condition and in amending the description of development without agreement.
9. This unreasonable behaviour resulted in unnecessary and wasted expense in relation to the applicant instructing a planning consultancy to compile an appeal against condition No 4 imposed on the planning permission.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense in the appeal process, as described in the PPG, has been demonstrated and that a full award of costs is justified.

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 the Broads Authority shall pay to Mr Matthew Hales of Clean and Coat Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Broads Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

G Dring

INSPECTOR