
Costs Decisions

Inquiry Held on 7-9 November 2023

Site visit made on 6 November 2023

by S M Watson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 December 2023

Costs application in relation to Appeal Refs: APP/U2370/C/23/3325409 & APP/U2370/C/23/3325410

Cube Bar Ltd, 2 Breck Road, Poulton-Le-Fylde, FY6 7AA

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Mellor (Cube Bar Ltd) and Mr Mellor for a full (or alternatively a partial) award of costs against Wyre Borough Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a breach of condition in relation to operating hours of the beer garden and the erection of a canopy.
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Decision

1. The application for costs is refused.

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.
3. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
4. Before the enforcement notice was served, it might have been sensible for the Council to have served a Planning Contravention Notice. However, there is no requirement to do so. The appeal for the canopy had been dismissed and the Council engaged in email conversations with the applicant's agent prior to serving the enforcement notice. It was not unreasonable for the Council to have put significant weight on that decision. It might have been of some benefit to meet with residents to seek their views but the Council was not obliged to do so. I do not consider that there was an unacceptable level of investigation or co-operation on behalf of the Council prior to serving the notice.
5. In respect of the implementation of the 2007 permission, there is documented conflicting evidence which was discussed at the Inquiry. It was not unreasonable for the Council to defend the applicant's claim that the 2007 planning permission had not been implemented.

6. I do not accept that the 2022 appeal decision¹ determined that the existing hours of use were lawful. The Inspector said that “there appears to be uncertainty over the lawful use of the outdoor area”. She then went on to say that “The Council accepts that its use until 2100 may now be lawful.” I consider that these phrases convey an element of doubt and there was not a clear finding that the hours of operation were lawful.
7. During the appeal, the Council gave little weight to the fact that the neighbours wanted to retain the canopy. Whilst I appreciate that the neighbours’ views should be taken account of, the Council explained that future occupiers might have a different tolerance of the noise than the existing neighbours. Although I have come to a different conclusion on the issue of living conditions, it was legitimate for the Council to consider both existing and future occupiers of the dwellings. The applicant also says that the Council minimised the security and privacy benefits of the canopy but it is a matter for the Council to ascribe the level of weight to each material consideration.
8. The Council did not have to accept that a condition could overcome their objections in relation to the hours of use. The planning regime and the licensing regime operate under different legislation and it was not unreasonable for the Council, under planning policy considerations, to maintain that the beer garden should be closed earlier than allowed by the licence.
9. In relation to Cavo, which has been granted planning permission for part of its beer garden with unrestricted hours of use, I acknowledge that as a matter of general principle, it is important that there is consistency in decision making. However, the Council accept that they should have imposed an hours condition on the outside area of Cavo and that it was an error to leave one off. It was not unreasonable for the Council to seek to avoid what they considered to be further harm from the applicant’s site. There is no duty on local planning authorities to repeat mistakes. In addition, my decision on the ground (a) appeal takes account of the neighbour’s concern that removal of the canopy might make the noise from Cavo worse, but this is only one of several considerations. Furthermore, the Council explained at the Inquiry it was in the process of enforcing against the larger part of the Cavo beer garden that does not have permission. I do not consider that the Council was duty bound to review its case on this matter alone.
10. In respect of noise measurements, the Council could have undertaken more thorough investigations before serving the enforcement notice. Nevertheless, a noise assessment was eventually carried out and the Council used the 2022 appeal decision for the canopy as evidence to substantiate their case. Their case was not based on unsubstantiated assertion. Furthermore, it is not unreasonable to make a planning judgement that some people would be in bed outside of the night-time period as defined by the Guidelines for the prevention of Community Noise Annoyance, World Health Organisation 1995 and BS 8233:2014 ‘Guidance on sound insulation and noise reduction for buildings’. There is always some subjectivity involved when assessing living conditions and judgements have to be made on the individual circumstances of a case, even if there is room to disagree. It is not solely an exercise in technical measurements. I disagree that the Council did not provide an objective analysis in respect of living conditions.

¹ APP/U2370/W/21/3280992

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the applicant's claim for costs fails.

Siobhan Watson

INSPECTOR