



Costs Decision

Site visit made on 8 October 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2024

Costs application in relation to Appeal Ref: APP/V1505/W/23/3334245 The Barge Inn, High Road, Vange, Essex, SS16 4ND

- 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 Husman Rafiq against the decision of Basildon Borough Council.
- The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The application sought planning permission for a change of use of the existing public house (Sui Generis) into a community centre and place of worship (Class F) and stopping up of a section of the highway without complying with a condition attached to planning permission Ref 21/00649/FULL, dated 17 September 2021.
- The condition in dispute is No 10 which states that: The hours of opening shall be restricted to 7am and 11pm daily.
- The reason given for the condition is: To protect the amenities of neighbouring occupiers.

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.
3. Paragraph 049¹ of the PPG highlights the examples of unreasonable behaviour by Local Planning Authorities where costs can be awarded. The applicant has submitted that the Council has acted unreasonably in that it has failed to substantiate its reason for refusal and made vague, generalised, or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis. The applicant further contends that in refusing permission the Council delayed a development that should clearly have been permitted.
4. I note the recommendation of the Council's officers was to approve the scheme, which the Planning Committee chose not to accept. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

¹ Appeals Paragraph: 049 Reference ID: 16-049-20140306

5. Having reviewed the information submitted with the application and the subsequent appeal, I have reached an alternative view to that of the Council. I came to that decision based on my consideration of the details and merits of the scheme, having regard to all the evidence and representations submitted.
6. In reaching their view, the Council also had this information before them, including the advice and recommendation of its Environmental Health team on the specific matters relating to noise and disturbance. Despite clarification from the Council officers that no complaints had been received from the public during the trial period of the temporary permission, in reaching their decision, Councillors chose to rely on limited anecdotal accounts, which were not substantiated by any conclusive evidence.
7. Furthermore, little new evidence has been put forward by the Council to support their reason for refusal or establish what levels of noise nuisance or disturbance have been experienced during the trial period, and if so, how this would be made worse by allowing the same extended operation times on a permanent basis. Nor has the alleged harm to living conditions been substantiated, other than a significant reliance on a potential or perceived impact.
8. As such, it appears that the Council has failed to grasp the nettle, regarding the aims and objectives of the trial period, which was to categorically establish whether or not the extension of the operating hours would cause harm to the neighbouring amenity. The evidence clearly indicates that no harm was identified. Therefore, in the absence of evidence to the contrary, (despite the arguments advanced in the Council's costs statement), I consider that the Council has acted unreasonably by failing to substantiate its reason for refusal by making a vague assertion about the proposal's impact.

Conclusion

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

Costs Order

10. 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 Basildon Borough Council shall pay to Mr Husman Rafiq, the costs of the appeal proceedings described in the heading of this decision, and such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the 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.

Robert Naylor

INSPECTOR