



Costs Decision

Hearing held on 3 and 4 December 2024

Site visit made on 4 December 2024

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2024

Costs application in relation to Appeal Ref: APP/V4630/W/24/3348824 Simons Restaurant, 520 Chester Road, Aldridge, Walsall WS9 0PU

- 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 The Little Ripley Day Nurseries Ltd for a full award of costs against Walsall Council.
 - The appeal was against the refusal of planning permission for change of use of vacant restaurant and café (Class E(b)) to Class E(f) childrens nursery with associated access, parking and landscaping.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 applicant has alleged that the Council behaved unreasonably by: declining to properly engage in pre-application discussions; failing to work proactively at application stage to reduce the scope of matters in dispute; acting contrary to the advice of a specialist internal consultee; declining to recognise a fallback position offered by a lawful development certificate; failing to adhere to appeal stage deadlines pertaining to submitted Statements of Common Ground; and delaying development which should clearly have been permitted.
4. It is evident that the applicant did not attain a detailed response to their request for pre-application advice and that there was scope for the Council to have taken a more helpful and positive approach at this early stage in proceedings. Even so, written correspondence did materialise confirming the Council's position and, in view of the site constraints at play (including remoteness from and connectivity to significant residential areas), it was not unreasonable for the view to have been taken that the development proposal conflicted with relevant provisions of the development plan and could not be supported as a matter of principle.
5. As such, whilst it is possible that matters in dispute could have been narrowed to some degree had proactive engagement occurred at pre application or the subsequent planning application stage, it is highly likely that such engagement would not have led to the Council's often credible concerns being sufficiently

resolved to enable the avoidance of an appeal. I also note here that evidence has been produced – including statements provided by technical internal consultees – to assist in substantiating each of the Council’s reasons for refusing planning permission.

6. It has been suggested that the Council’s Environmental Health Officer confirmed no objection to the proposal at planning application stage. However, whilst it was intimated by said Officer that a raft of noise mitigation measures could resolve her concerns, a strong potential for the proposed nursery to be detrimental to the amenity of neighbouring residential occupiers was also noted. Further, the Council’s Environmental Protection Manager attended the Hearing and raised valid points to endorse the Council’s case – including in relation to the difficulties/uncertainties that can be associated with assessing effects from vocal noise.
7. The lawful development certificate¹ referred to was granted after the Council’s decision to refuse planning permission for the scheme now at appeal and relates to the same arrangement of enclosures intended as part of the appeal proposal. Whilst this certificate demonstrates a real prospect of such enclosures being erected at the site, it does not follow that the Council’s opposition to the appeal scheme ought to have necessarily dropped away. For example, its satisfactorily plausible concerns in a Green Belt openness/character sense are in-part based upon an intensified use of outdoor space. Further, as shall be seen from my decision upon the planning appeal to which this application relates, I have found the certificate to be of little relevance to the effect upon protected trees.
8. Statements of Common Ground (SoCGs) were agreed very late in the appeal process, including one (pertaining to noise) after the Hearing had opened. This is despite the appeal start letter, dated 18 September 2024, indicating that a completed and agreed statement should be submitted by 23 October and subsequent correspondence also from the Planning Inspectorate, dated 12 November 2024, requesting that agreed statements be submitted by 22 November.
9. Given that draft SoCGs were before the Council early in the appeal process, and having noted correspondence from the applicant chasing responses, the responsibility for failing to agree SoCGs in a timely manner lies firmly with the Council. Whilst it is fair for the Council to suggest that internal consultation/checking was required, this process should have been either commenced earlier or expedited with a view to adhering to set deadlines. That said, even though unreasonable behaviour is pinpointable, detailed SoCGs that assisted discussion at the event were ultimately agreed. As such, I am unable to identify associated unnecessary or wasted expense of a clearly identifiable and substantive nature.
10. For the above reasons, development was not delayed that should clearly have been permitted and unreasonable behaviour resulting in unnecessary or wasted expense has not occurred such that an award of costs is not warranted.

Andrew Smith

INSPECTOR

¹ Ref: 24/0392