
Costs Decision

Site visit made on 19 July 2019

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 August 2019

Costs application in relation to Appeal Ref: APP/G4620/W/19/3227763 Unit 21 Mount Pleasant Street, West Bromwich B70 7DP

- 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 S Ali for a full award of costs against Sandwell Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the change of use of an industrial unit to a snooker hall.
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Decision

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

Reasons

2. The National 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 or wasted expense in the appeal process.
3. The PPG makes clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and not on *'vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.'*¹
4. Whilst 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. The appellant lists a number of grounds for what, in their opinion, represents unreasonable behaviour by the Council, which are dealt with in turn below.

Dealing with the application in a proactive manner with an unhelpful approach, with the Council Members deciding against the decision of its professional officers.

5. It is understood that the application for the change of use was a result of enforcement action carried out by the Council. In this respect it appears to me that the Council's professional officers worked proactively with the appellant in discussing the proposed use and options and amending the application such as via reducing hours, increasing parking, in order for the application to be more appropriate considering its context.
6. Whilst the Council members at their committee decided to make a decision against the advice of its officers, they are entitled to do this, however must have a sound and robust basis for doing so.

¹ PPG, 049 Reference ID: 16-049-20140306, Dated 06 03 2014

7. In undertaking their assessment, the Council Members applied their own local knowledge which they gave significant weight to in coming to an assessment of the application's acceptability. I do not see evidence that the Council's professional officers were unhelpful, and that an appeal could have been avoided. A valid and robust approach was undertaken by Council Members in the determination of the scheme. I do not feel that the Council has acted unreasonably in this regard.

Prevent a legitimate development when there have been other recent approvals on the site for the same class use D2.

8. A historic planning permission² approved a D2 use on the site, however this was for an indoor sports facility rather than a snooker hall. Whilst both the previously approved use and the proposed use are within the same D2 use class, they are not identical and require different assessments with regards to their appropriateness based upon the specifics of the use. In the case of the previous approval, the site ran on a membership basis whereby the Council felt that issues regarding parking and crime were different.
9. Whilst of the same use class, the merits of each scheme were significantly different and required different considerations. Accordingly, I find that the Council has not failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. The Council had reasonable concerns about the impact of the proposed development which justified its decision. I do not find that the former approval was analogous to this application and the appellant had to address those concerns and the evidence of third parties in any event. As such, unreasonable behaviour in accordance with the PPG has not been demonstrated.

Vague, generalized or inaccurate assertions about a proposal impact which are unsupported by any objective analysis. The appellant has produced proof from the WMP, which contradicts the LPA assertions.

10. Reason for Refusal No2 related to the levels of crime and the proposals impact towards that level of crime. The Council based their findings upon correspondence from the West Midlands Police with regards to the location being the fourth most vulnerable location in the council area which may generate more vehicle crime. This information as well as local knowledge from the council members and views of surrounding residents was taken into account during the planning application.
11. Whilst the Appellant submitted a further email from the West Midlands Police, this was during the appeals process, and after the determination of the application. The email correspondence presented does not contradict the Council's opinion on levels of crime or potential anti-social behaviour, but rather gives advice on appropriate management and ways in which problems can be appropriately managed.
12. That said, the Council's judgement and opinion on the levels of crime was fully justified and I do not believe that unreasonable behaviour in accordance with the PPG has been demonstrated.

Planning permission on a planning ground capable of being dealt with by conditions.

² Sandwell Council Planning Ref: DC/15/58037

13. The Appellant has not described in their reasoning of how the reasons for refusal could have adequately been dealt with via conditions, meaning that the appeal could have been avoided. It is unclear how a condition could negate against the fear of crime and would be unlikely to be compliant with the PPG on the necessity of conditions as it would most likely not be able to be enforced. According to the Council, no correspondence from the appellant in the form of a potential condition was presented in order to demonstrate that a condition could be undertaken.
14. I am therefore not convinced that conditions could have overcome the concerns of the Council members and as such, the Council has not behaved unreasonably in this respect.

Conclusion

15. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

J Somers

INSPECTOR