Costs Decision

Inquiry held on 9 and 10 July 2009
Site visit made on 13 July 2009

by Roland Punshon **BSc (Hons) MRTPI**

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

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Decision date:
13 August 2009

Costs application in relation to Appeals Refs:
Appeal A - APP/K2420/A/09/2097837
Appeal B - APP/K2420/A/09/2097838
Appeal C - APP/K2420/A/09/2097840
Pinewood Lodge, Holiday Village, Overton Road, Ibstock, Leicestershire LE67 6PD

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Roy Borthwick for a partial award of costs against Hinckley & Bosworth Borough Council.
- The inquiry was in connection with appeals against the refusal of the Council to grant planning permissions for:

Appeal A - demolition of the existing conservatory and rebuild to provide a family dining/breakfast room with bar area, wc facilities and reception area together with change of use of part ground floor of dwelling to provide a tea room/dining area and kitchen.
Appeal B - change of use of part of garage to provide 2 holiday chalets and manager's accommodation.
Appeal C - retention of buildings and use to provide staff room and shower facilities.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Mr Roy Borthwick (the appellant)

1. The application is for a partial award of costs in respect of expenses incurred in preparing Mr Jephson's evidence on noise matters and his attendance at the Inquiry. The Council raised the issue of noise on all 3 of its refusals of permission. Paragraph B16 of Circular 03/2009 requires that the local planning authority should produce evidence to show clearly why development cannot be permitted. The decision notice should be carefully framed and should set out in full the reasons for refusal. Reasons should be complete, precise, specific and relevant to the application. The local planning authority is expected to produce evidence at the appeal stage to substantiate each reason for refusal. If it cannot do so it risks a costs award against itself in respect of an unsubstantiated reason for refusal.

2. The Council's reasons for refusal relating to noise and disturbance have been utterly unsubstantiated. Mr Jephson's evidence examined the likely impact of noise on neighbours. All parties should co-operate in order to minimise costs. If the Council was satisfied with Mr Jephson's findings, why did they not say so and he need not have attended the Inquiry? The appellant is therefore entitled to an award of costs in this regard.

The Response by Hinckley and Bosworth Borough Council (the Council)

3. The application for an award of partial costs is opposed by the Council. The reasons for refusal state that the proposals have 'the potential' to cause noise nuisance and disturbance to neighbours. This was a reasonable assumption bearing in mind the nature of the proposals to add to and improve the existing on-site facilities.

4. Mr Jephson's evidence was limited by the brief he had been given. It does not address the 'potential' for noise nuisance and provides only a 'snapshot' of conditions on site in a particular set of circumstances. It does not extrapolate those findings to address other circumstances which could arise.

5. In these circumstances the Council should not be required to contribute to the appellant's costs.

Conclusions

6. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

7. The Council's concerns about noise nuisance to neighbours appear to have been based solely on the nature of the uses proposed. There is no evidence that any advice was taken from other Council officers who were expert on noise nuisance issues. Equally there is no evidence that the Council sought to establish what the likely levels of noise would be or whether these could be controlled by the imposition of conditions.

8. Evidence was produced at the Inquiry to show that complaints to the Council regarding noise had been raised in the past albeit, as the appellant argued, when the site was being operated by someone else. However, until the matter was raised by a third party, the Council was not aware of these historic problems.

9. In my view, the Council produced no clear evidence to show that its concerns regarding noise had any sound basis when refusing permission or to substantiate those reasons for refusal at the Inquiry. I consider that the Council acted unreasonably in this regard.

10. Mr Jephson's evidence is, as the Council argues, largely a 'snapshot' of existing conditions. However, had I granted planning permission for the Appeal A proposal, it would have at least allowed the formulation of conditions which would have ensured that levels of generated noise would not cause nuisance. Had the Council undertaken its own survey and analysis before making its decision to refuse planning permission, it may similarly have concluded that the matter could have been adequately addressed. With regard to the Appeals B and C proposals, I consider that the Council had no clear grounds for assessing that there was 'potential' for noise nuisance. The appellant should not have had to undertake the work which he did to show that his proposal was acceptable in this regard when the Council had no solid reason for concluding that it was not.

In my opinion, the appellant was put to unnecessary expense in having to produce this evidence and in having to appear at the Inquiry.

Formal Decision and Costs Order

11. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Hinckley and Bosworth Borough Council shall pay to Mr Roy Borthwick , the costs of the appeal proceedings limited to those costs incurred in preparing evidence on noise issues and the attendance at the Inquiry of the appellant's expert witness on noise issues, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned appeals under section 78 of the Town and Country Planning Act 1990 as amended against the refusals of planning permissions for demolition of the existing conservatory and rebuild to provide a family dining/breakfast room with bar area, wc facilities and reception area together with change of use of part ground floor of dwelling to provide a tea room/dining area and kitchen, change of use of part of garage to provide 2 holiday chalets and manager's accommodation and retention of buildings and use to provide staff room and shower facilities on land at Pinewood Lodge, Holiday Village, Overton Road, Ibstock, Leicestershire LE67 6PD.

12. The applicant is now invited to submit to Hinckley and Bosworth Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Roland Punshon

INSPECTOR