The Planning Inspectorate

Costs Decision

Hearing held on 10 November 2016

Site visit made on 10 November 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 14 December 2016

Costs application in relation to Appeal Ref: APP/Q1445/W/16/3145987 Aldi Store, 7 Carlton Terrace, Portslade, Brighton BN41 1XF

- 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 Aldi Stores Ltd for a full award of costs against Brighton & Hove City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for mixed use development comprising food retail unit and residential units without complying with a condition attached to planning permission Ref BH/2010/01684 (as amended by planning permission BH2011/02857 dated 7 December 2011).

Decision

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

The submissions for Aldi Stores Ltd

2. The application for costs was submitted in writing. At the hearing the appellant maintained the application and confirmed that the condition limiting the hours of operation of the refuse compactor would remain as now.

The response by Brighton & Hove Council

3. The Council's response was also made in writing. At the hearing it was reiterated that the Planning Committee were entitled to take into account the representations of local residents directly affected and that these views carry significant weight. The Council's decision was therefore reasonable.

Reasons

4. Planning Practice Guidance 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.

5. In this case the appellant argues that the Council acted unreasonably in refusing the application contrary to the advice of its environmental health and planning officers. It is claimed that the Council prevented or delayed a development that should clearly be permitted, failed to provide any objective or technical evidence to justify its decision and only made vague and inaccurate assertions unsupported by any objective analysis.

6. The Council, acting in its role as local planning authority, is not bound to accept the advice of its officers providing there are reasonable grounds for taking a

contrary decision. In this case, the Council did not provide a supporting statement but relied on the minutes of the Planning Committee and the representations of local residents, elaborating upon these at the hearing.

7. The officer's recommendation was based upon two acoustic reports prepared by the appellant, the first relating to noise from the car park and the second noise generated within the store. However, the first report was not accepted by the Council's Environmental Health Officer (EHO) as it failed to include any internal noise measurements in nearby properties and only assessed noise within the car park on the basis of dB L_{Aeq} measurements when individual noise events assessed in terms of dB L_{Amax} would have been more appropriate.

8. The second report was based on noise measurements within the store but, due to the level of ongoing conflict between Aldi and the residents, it was not possible to take measurements within the Ronuk House flats. Whilst not the appellant's fault, this meant that the noise levels within the flats were only estimated on the basis of the assumed noise reduction of the intervening floor. Although the Council's EHO accepted this methodology, the lack of actual measurements in the flats was a significant weakness in the report. Furthermore, noise and disturbance from the car park was not revisited.

9. The Planning Committee had to consider this evidence alongside the detailed representations of local residents, made both in writing and verbally at the meeting. These related to noise and disturbance from both the car park and internally from the store, and also complaints that the existing conditions were not being complied with, including the hours of operation of the compactor. Albeit not made in terms of quantitative noise measures, these observations were objective evidence and not vague, generalised or inaccurate assertions.

10. The representations of the residents were properly given weight as they have direct, first-hand experience of the operation of the store from close quarters. The first acoustic report had shortcomings and the second was based on theoretical calculations rather than actual readings. In these circumstances it was reasonable for the Planning Committee to be unconvinced by the acoustic reports, the advice based upon them, and whether the revised condition would be effective in limiting the impact on nearby residents. The reason for refusal was very clear as to the matter in dispute.

11. An appeal statement in support of the Council's position would have been desirable as the minutes of the meeting can only give a brief impression of the discussion. However, this was not unreasonable in itself.

12. It is understandable that the appellant was disappointed in the Council's decision having gained a favourable recommendation from its officers, but the Council was entitled to take a contrary view and it was reasonable to rely on the evidence of local residents to support its case at appeal. The action to refuse permission and pursue the case was not therefore unreasonable.

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

David Reed

INSPECTOR