



The Planning Inspectorate

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South Somerset District Council
The Council Offices
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Somerset
BA20 2HT

Your Ref: 14/01699/P3JPA
Our Ref: APP/R3325/A/14/2229419
Date: 26 February 2015

Dear Mr Norris

Town and Country Planning Act 1990
Appeal by Mr David Warrington
Site at 72-74 Middle Street, Yeovil, Somerset, BA20 1LU

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

If you have queries or feedback about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>.

If you do not have internet access please write to the Quality Assurance Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

You should also note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly. Please contact the Administrative Court for further information.



Yours sincerely

Natalie Dun

COVERDL2

You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button

The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 – section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment¹. This is handled by:

The Senior Court Costs Office²
Clifford's Inn
Fetter Lane
London EC4A 1DQ
(Tel: 020 7947 7124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court³. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or their Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

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¹ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. These rules are available online at http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm

You can buy these Rules from The Stationery Office bookshops or look at copies in your local library or council offices.

² Formally named the Supreme Court Costs Office

³ Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.

Appeal Decision

Hearing held on 29 January 2015
Site visit made on 29 January 2015

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 26 February 2015

Appeal Ref: APP/R3325/A/14/2229419
72-74 Middle Street, Stars Lane, Yeovil, Somerset BA20 1LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Schedule 2, Part 3, Class J of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
 - The appeal is made by Intercountry Properties Ltd against the decision of South Somerset District Council.
 - The application Ref 14/01699/P3JPA, dated 04 April 2014, was refused by notice dated 30 May 2014.
 - The development proposed is described on the application form as: To convert the first floor of the building form [sic] offices to residential apartments.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class J of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) for the change of use of the first floor of the building from a use falling within Class B1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended, to a use falling within Class C3 (dwellinghouses) of that Schedule and comprising 11 flats, at 72-74 Middle Street, Stars Lane, Yeovil, Somerset BA20 1LU; subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the details submitted with the application, which is for a change of use to provide 11 flats, as shown on drawing number 1208-PL.05.

Application for costs

2. At the Hearing an application for costs was made by Intercountry Properties Ltd against South Somerset District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development on the application form states that the proposal is for the conversion of the first floor of the building from B1(a) offices to residential apartments. The Council's decision notice describes the proposal in a similar manner but refers to an indicative quantum of 11 units. That reference was drawn from plan number 1208 – PL.05, which was submitted with the application, showing the floor area divided into 11 units. At the Hearing, the Council and the appellant agreed that the plan formed part of the

application submission, with reference to paragraph 2(b) of the Part N of the GPDO. In view of the above, I have re-worded the description of development within my decision to reflect the statutory wording within Class J and to specify that the proposal is for the creation of 11 flats. The prior approval procedure relates purely to the change of use of the building and does not authorise any operational development or changes to the external façade of the building that would otherwise require planning permission.

4. The Council's decision notice did not explicitly state that prior approval for the proposed change of use had been refused; it stated that prior approval was 'required', listing 5 reasons for the decision. The first reason for refusal alleged that the use of the building did not fall within Class B1(a). In effect, this amounted to a refusal under paragraph N(2A) of Part 3 of Schedule 2 to the GPDO. Having so refused, it was procedurally incorrect of the Council to move on to address matters in its reason for refusal that it considered needed prior approval. Consequently, the appeal is one against a refusal under paragraph N(2A). However, having discussed this matter at the Hearing, in the event that I determine that the proposal is permitted development under Class J (contrary to the first reason for refusal) I shall treat the decision as a refusal of prior approval.
5. With regard to the scope of prior approval, paragraph J.2 clearly identifies the matters for which prior approval is required, these being transport and highway impacts, contamination risks and flood risks. Paragraph N8(b) makes clear that regard should only be had to the Framework insofar as is relevant to the subject matter of the prior approval. There is no ambiguity in the wording of the GPDO in this respect. Amendments were made to paragraph N of the GPDO in 2014 to clarify this position¹. The explanatory memorandum to the amending order explicitly states that local planning authorities should only consider the National Planning Policy Framework (the Framework) 'to the extent that it is relevant to the matter on which prior approval is sought'². Consequently, matters of noise and the local economy (the second and third reasons for refusal) do not fall to be considered under the prior approval procedure; the Council has misconstrued the effect of paragraph N8(b) in this regard.
6. Therefore, whilst I note the concerns raised by the owners of adjacent premises, the only valid prior approval topic addressed in the Council's reason for refusal is the transport and highway impact of the development.

Main Issue

7. In view of the above, the main issues are:
 - i) Whether the first floor of the building was last used lawfully for Class B1(a) purposes at 30 May 2013; and
 - ii) If so, whether the development would be acceptable in terms of transport and highways impacts, with particular regard to parking provision.

¹ The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014: SI 2014 No. 564.

² Paragraph 4.7 of the Explanatory Memorandum to SI 2014 No. 564

Reasons

Last Lawful Use

8. I must first consider whether the proposal would be permitted development for the purposes of Class J. In this regard, it must be demonstrated to my satisfaction, on the balance of probabilities, that, at 30 May 2013, the first floor of the building was used, or last used, lawfully for office purposes within Class B1(a) of the Schedule to the Use Classes Order. The Council and other parties dispute this. However, I am mindful that the judgment in *Gabbitas v SSE & Newham LBC* [1985] JPL 630 makes it clear that if the Council has no evidence of its own, or from others, to contradict or otherwise make the Appellant's version of events less than probable, there is no good reason to dismiss a case to the effect that a use is lawful, provided the Appellant's evidence alone is sufficiently precise and unambiguous.
9. It is common ground that the original planning permission granted consent for the first floor of the building to be used as offices and that the space was subsequently occupied by Normalair Garrett as an accounts office. The company was a subsidiary of Westland Helicopters and the information before me indicates that the accounts office was used directly in connection with that business. As such, it was not an office within Class A2 where services were provided principally to visiting members of the public. Consequently I am satisfied that the last lawful use of the property fell within Class B1(a).
10. Following the cessation of use by Normalair Garrett, the southern half of the floor has been unoccupied since 1998. The northern section is divided roughly in two. One half was used as a radio station until they vacated the premises in March 2014. No written evidence or documentation was submitted to specify when the radio station moved in to the building. The appellant suggested verbally that the term of occupation lasted 3 years. It is common ground between the Council and the appellant that this use fell within Class B1(a). No evidence has been presented that would lead me to doubt this agreed position and, at the accompanied site visit, the layout from the radio station remained intact, with two small recording/ presenting booths set to the side of a larger open plan office area.
11. The other half of the northern section was occupied for a three year period by Yeovil College. If teaching was the primary function that use would have fallen within Class D1 (non-residential institutions). The appellant contends that the premises were primarily used as an office based function, within Class B1(a) and that teaching facilities were ancillary to that use. Insufficient evidence has been presented to draw a definitive conclusion on that point. However, if the use fell within Class D1, it would not have benefitted from planning permission given that no consent had been granted for such a use. Use for a period of three years would not have been enough for any unauthorised use to become lawful; a point accepted by the Council at the Hearing. Consequently, the lawful use of that part of the building remained within Class B1(a), as authorised by the original planning permission.
12. In view of the above, I conclude on the balance of probabilities that, at 30 May 2013, the first floor of the building was last used lawfully for purposes within Class B1(a). As such, the proposal would constitute permitted development under the terms of paragraph J.1 of the GPDO. My decision in this matter is taken on the balance of the evidence before me and does not constitute a

formal determination as to the lawful use of the property. The procedure for gaining such a determination would be to apply for a certificate of lawfulness for the existing use under the provisions of section 191 of the Town and Country Planning Act 1990.

Transport and Highway Impacts

13. The site is not at risk from flooding or contamination. With regard to highway and transportation matters it is common ground that the proposal would not result in a material increase or change in the character of traffic in the vicinity of the site³. Given the modest number of flats proposed, I see no reason to disagree with the assessment and, consequently, there would be no adverse impact on the highway network in terms of highway safety or congestion. The local highway authority raised no objection to the proposal.
14. Evidence presented by the Council suggests that short and medium stay public car parks are expected to be at or above capacity – at peak times – in future years. Their concerns stem from a desire to control development within the town centre to avoid undue pressure on parking provision. I am satisfied that these concerns are relevant highway and transportation matters and that prior approval is required on those grounds in order to fully consider potential impacts relating to parking within the town centre.
15. The site is located within the heart of the town where residents would have access to a full range of facilities without reliance upon the private car. The Council's survey of recently completed town centre developments identified that those without cars used a range of transport modes to go about their daily lives. 54% of the households that responded to the survey did not own a car. Of the 46% who did have a car only 17% used town centre car parks, whilst 52% had access to off-road parking spaces. It is not clear whether the availability of those spaces was a factor in the respective residents' decision to own a car.
16. Any residents of the proposed flats would be aware of the lack of dedicated parking and could decide for themselves if this was a satisfactory arrangement. If car ownership levels of the proposed development were similar to the properties surveyed (i.e. 54% with no car) residents of approximately 5 or 6 of the flats would be likely to have access to a vehicle. If the survey was replicated, not all of these would rely on town centre car parks. Thus, the overall impact on parking provision would be insubstantial and the statistical analysis presented by the Council does not demonstrate that the proposal would add any significant pressure in this regard.
17. Furthermore, it is common ground that parking demand from the proposal during weekday working hours would not be greater than that associated with the existing permitted use. The analysis of town centre car parks does not highlight a capacity issue during evening hours when residential parking demand is likely to be at its greatest. The Council acknowledged at the Hearing that the impact of the development itself would be small but raised concerns about the cumulative effect of future developments in the town centre. No information about planned developments or the level of expected residential growth was provided to support this argument. Consequently, the

³ Paragraph 6.10 of the Statement of Common Ground

concerns regarding cumulative impacts were not supported by any compelling evidence.

18. Paragraph 32 of the Framework notes that applications should only be refused on transport grounds where the cumulative impacts would be severe. For the reasons given, no significant impacts would arise from the proposal to warrant the refusal of prior approval on transport and highways grounds.

Conditions

19. No conditions of relevance to the matters of prior approval were put forward. Paragraph N(10) of the GPDO stipulates that development shall be carried out in accordance with the details approved by the local planning authority or, in this case the Secretary of State. Given the agreement at the Hearing that the proposed floor plan formed part of the application I have attached a condition to ensure that the development complies with that plan for the avoidance of doubt.

Conclusion

20. Having regard to the Framework, as required by Part N of the GPDO, no impacts have been identified that would suggest that prior approval should be refused. Accordingly, I conclude that the appeal should be allowed and prior approval granted. The appellant should note that paragraph J.1(c) requires that the development should be completed on or before 30 May 2016.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

| | |
|---------------------|----------------------------|
| Mr Daniel Witney | Mosaic Town Planning |
| Ms John Patterson | CAD Architecture Ltd |
| Mr David Warrington | Intercounty Properties Ltd |

FOR THE LOCAL PLANNING AUTHORITY:

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|--------------------|---|
| Mr Simon Fox | Area Lead Officer, South Somerset District Council |
| Mr Paul Huntington | Environmental Health Officer, South Somerset District Council |

INTERESTED PERSONS:

| | |
|----------------------|---------------------------------|
| Mr Terry Clare | Landlord of Bar Karma |
| Mr John Aust | ERA Leisure, owners of Club Neo |
| Mr Jeremy Wood | Wood's Wine Bar |
| Ms Sarah Butterfield | Alliance Planning |



Costs Decision

Hearing held on 29 January 2015

Site visit made on 29 January 2015

by **Chris Preston BA (Hons) BPI MRTPI**

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

Decision date: 26 February 2015

Costs application in relation to Appeal Ref: APP/R3325/A/14/2229419 72-74 Middle Street, Stars Lane, Yeovil, Somerset BA20 1LU

- 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 Intercountry Properties Limited for a full award of costs against South Somerset District Council.
 - The hearing was in connection with an appeal against the refusal to grant prior approval under Schedule 2, Part 3, Class J of the Town and Country Planning (General Permitted Development) Order 1995, as amended, for the change of use of the first floor of the building from a use falling within Class B1(a) of the Town and Country Planning (use Classes) Order 1987, as amended, to a use falling within Class C3 (dwellinghouses) of that Schedule and comprising 11 flats.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Summary of the Application and the Council's Response

2. The application, which seeks a full award of costs, was submitted in writing in advance of the Hearing and the Council read out a prepared response at the event. Consequently, I do not propose to repeat those submissions in detail. In short, the applicant considers that the Council has misinterpreted Part N, of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) by considering matters outside the scope of the prior approval process; namely noise and economic impact. With regard to car parking, the applicant considers that the Council has not adequately justified its reason for refusal and that its decision was inconsistent with a recent decision relating to a similar proposal nearby.
3. In response, the Council consider that the legislation is ambiguous and open to interpretation as to the scope for considering matters beyond those listed in Part J. In their view, the decision was based on well-founded planning considerations, supported by concerns raised by local businesses, representatives from which presented evidence at the Hearing. The Council considered the proposal on its merits and the circumstances of the proposal and location of the site are not directly comparable to the Western Gazette building referred to by the applicant.

Reasons

4. 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 wasted or unnecessary expense in the appeal process.

5. In my decision I have found that consideration of the proposal should have been limited to the relevant criteria in paragraph J.2 of the GPDO, taking into account the Framework only as it relates to matters of highways and transportation impact, contamination and flood risk. The provisions are not ambiguous and amendments were made to the GPDO in 2014 to clarify the scope of the prior approval procedure. The National Planning Policy Framework (the Framework) should only be considered insofar as it relates to the matters on which prior approval is sought. Consequently, the Council have misinterpreted the GPDO in taking account of other matters including noise and the potential effect on the local economy.
6. I appreciate that the Council was faced with genuine concerns from local businesses and the Environmental Health Officer due to the close proximity of the site to late night bars and nightclubs. However, whatever the merits of those concerns, the prior notification process does not allow scope to consider matters beyond those listed at paragraph J.2. Thus, it was not reasonable to refuse the proposal on those grounds. This led to unnecessary submission of evidence relating to those matters in appeal proceedings.
7. It was common ground that the proposal would not result in a material increase or change in the character of traffic in the vicinity of the site. No objections were received from the local highway authority. The evidence presented by the Council did not demonstrate that the development would result in any undue pressure on town centre parking provision, over and above the existing permitted use.
8. The GPDO requires that consideration is given to the National Planning Policy Framework insofar as it relates to the subject matter of prior approval. The location of the site is inherently sustainable, in line with the aims of paragraph 34 of the Framework and impact on parking provision would be negligible. Paragraph 32 notes that development should only be prevented on transport grounds where the residual cumulative impacts are severe. The evidence presented did not suggest that this would be the case. Therefore, whilst it was reasonable for the Council to consider that prior approval was necessary, in order to consider the potential impact on parking provision, the decision to refuse the proposal on those grounds was unreasonable and not supported by the evidence presented. Therefore, with regard to paragraph 049 of the PPG (Reference ID: 16-049-20140306) the decision was not supported by objective analysis or substantive evidence to suggest that prior approval should be refused on highway and transportation grounds. It should clearly have been permitted having regard to national policy and other material considerations.
9. I was not provided with full details, including plans, relating to the prior approval at the former Western Gazette office. In that case, the Council determined that prior approval was not required. I undertook an unaccompanied visit to the site following the close of the Hearing. It is within a different part of the town centre to the proposal before me and, on the evidence before me, the Council examined the proposal on its particular merits. In particular, the officer report specifically assessed the parking arrangements in the vicinity of the site. Whilst both proposals are in the town centre, the circumstances relating to each is different, as is the proximity of public car

parks. On that basis, it was not unreasonable for the Council to draw different conclusions in relation to each proposal.

10. However, for the reasons set out above, I conclude that the reason for refusal on highway and transportation grounds was unreasonable and not supported by objective analysis. Furthermore, when set against the scope of the prior approval process, it is clear that prior approval should have been granted. The Council misinterpreted the GPDO in relying on matters relating to noise and the local economy. Consequently, the Council have sought to prevent a development that should clearly have been permitted, an action which puts them at risk of an award of costs, as set out at paragraph 16-049 of the Practice Guidance.
11. Therefore, I conclude that unreasonable behaviour has been demonstrated and that this led to unnecessary and wasted expense in the subsequent appeal proceedings. Consequently, a full award of costs is justified.
12. The Council suggest that consideration should be given to the fact that they have incurred expenses in the hiring of accommodation to host the Hearing at relatively short notice. However, for the reasons set out, their decision was unreasonable and, therefore, any costs incurred were as a result of their own actions. Thus, this is not a matter that overcomes the justification for the full award of costs against them.

Costs Order

13. 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 South Somerset District Council shall pay to Intercounty Properties Limited, the costs of the appeal proceedings described in the heading of this decision.
14. The applicant is now invited to submit to South Somerset District 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 Senior Courts Costs Office is enclosed.

Chris Preston

INSPECTOR