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## Costs Decision

Site visit made on 20 September 2016

**by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI**

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

**Decision date: 14<sup>th</sup> October 2016**

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**Costs application in relation to Appeal Ref: APP/T1410/W/16/3150687  
4-8 Pevensey Road, Eastbourne, East Sussex BN21 3HJ**

- 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 Wildwood Properties Ltd for a full award of costs against Eastbourne Borough Council.
  - The appeal was against the refusal of the Council to grant subject to conditions planning permission for change of use from vacant wine bar and taxi office at ground floor and basement levels to 1 x 2 bedroom apartment, 2 x 1 bedroom apartments and studio flat together with removal of existing shopfronts and replaced with glazed doors, new entrance doors, provision of refuse storage facility and railings to front boundary and associated alterations.
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### Decision

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

### Reasons

2. 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 unnecessary or wasted expense in the appeal process.
  3. According to the appellant the issue of noise was identified as a cause of concern at a site meeting with Council officers in June 2015. The noise survey was carried out in July and the report before me is dated 26 November 2015. Neither party has suggested that any discussions took place about the contents of this report prior to its submission, along with the amended plans, on 28 January 2016.
  4. Although the Council state that the noise report was received, consulted upon, evaluated and informed the officer report, there is no evidence of this within the report itself. Concerns about noise are frequently referred to environmental health officers for comment, but I did not find any definitive evidence that such consultation had taken place either with the submitted report or any earlier draft.
  5. The officer's report acknowledges the report's conclusions about the possibility of mitigation measures through the installation of double glazing. However, it does not give any reasons for rejecting this as a means of reducing the noise within the proposed apartments to acceptable levels. The Council's objection in principle was therefore unfounded and contrary to the available evidence.
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6. In presenting its case at appeal the Council did not comment on the adequacy, or otherwise, of the double glazing. Although it raised concerns about the level of noise with the windows open, it did not substantiate its reasons for rejecting mechanical ventilation. Its only comment was that this would not be 'ideal'. I therefore consider that the Council failed to justify its reason for refusal, relying on vague, generalised assertions about the proposal's impact, which were unsupported by objective analysis.
7. Similarly, I consider that the rejection of the scheme because of the effects of the bin store on the character and appearance of the area was unreasonable. The officer's report suggested that these facilities could potentially be accommodated inside the building together with an area in which to store bicycles. However, it was not suggested that the matter could be addressed by imposing a condition requiring a revised layout. Nonetheless, this was put forward as a means of overcoming this reason for refusal in the course of the appeal. The Council therefore risked an award of costs because its reason for refusal was capable of being dealt with by condition, as I have concluded.
8. In responding to the claim for costs, the Council stated that the decision on the application was made by the Planning Committee in line with the officer's recommendation. However, from other evidence before me it appeared that the application was determined by officers under delegated powers. These apparent inaccuracies have contributed to the appellant's concerns about the manner in which the application was dealt with by the Council.
9. Consequently, I find that the Council's decision was not based on sound reasons. It took insufficient account of the evidence provided by the appellant and provided an inadequate explanation of its decision within its appeal statement. Having had the scheme refused in the face of evidence that mitigation measures could address the identified noise problems, and no suggestion that the refuse storage facilities could be dealt with by way of a condition, the appellant had no option other than to pursue the appeal. In so doing this has caused him to incur the expense of presenting his case.
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and an award of costs is justified.

### **Costs Order**

11. 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 Eastbourne Borough Council shall pay to Wildwood Properties Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Eastbourne 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.

*Sheila Holden*

INSPECTOR