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## Costs Decision

Site visit made on 14 November 2016

**by Gareth Wildgoose BSc (Hons) MSc MRTPI**

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

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

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### **Costs application in relation to Appeal Ref: APP/M9496/W/16/3157101 Rutland Arms, Calver Road, Baslow, Derbyshire DE45 1RP**

- 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 Peter Brett Associates for a full award of costs against the Peak District National Park Authority.
  - The appeal was against the refusal of planning permission for change of use and alterations to external elevations to create Class A1 convenience store with associated servicing, refuse, plant and parking areas without complying with a condition attached to planning permission Ref NP/DDD/0115/0040.
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### **Decision**

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

### **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 that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
  3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters such as preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. Other substantive matters include the failure to produce evidence to substantiate a reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
  4. The application for costs relates to substantive matters listed, with particular reference to a failure to support the reason for refusal concerning noise and generalised assertions about the proposal's impact which have not been supported by an objective analysis.
  5. The reason for refusal set out in the decision notice is complete, precise and specific to the application. It clearly identifies what the Council considers to constitute harm and states the policies of the Peak District Local Plan (LP) to which it considers that proposal would be in conflict, together with the National Planning Policy Framework (the Framework).
  6. It is evident from my appeal decision that I agree with the District Council Environmental Health Officer (EHO) and the National Park Authority, in terms
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- of the unsuitability of the monitoring position used for the surveys which informed the original noise impact assessment report dated February 2016.
7. However, the applicant sought to address these concerns through surveys in April 2016 at an alternative monitoring position closer to the nearest residential receptor which informed the revised noise impact assessment report dated May 2016. This was supported by prior correspondence with the District Council EHO explaining that the measurement would be undertaken as close as possible to the nearest noise sensitive receptors without trespassing in accordance with BS4142:2014. Although the District Council EHO subsequently expressed concern that the monitoring location was not a truly representative point to all the nearest noise sensitive properties, the restrictions in this regard were acknowledged.
  8. Notwithstanding the above, the District Council EHO expressed concerns relating to the predicted noise levels and conclusions of the May 2016 report and maintained that the requested earlier operating times would have a negative impact on the nearest noise sensitive properties. However, no alternative technical evidence has been provided by the District Council EHO or the National Park Authority to support such a view.
  9. With regard to the above, it is evident from Appendix 1 of the Statement of Case submitted by the National Park Authority, that the view of the District Council EHO is an assertion that is not evidence based and contrary to technical evidence prepared in accordance with BS4142:2014 with regard to the Framework and the PPG. This includes additional evidence submitted to this appeal, including a further technical note from the applicant and a peer review undertaken by Acoustics Central. The advice from the District Council EHO has also failed to take into account the available controls on deliveries offered by a separate condition or the fallback positions of the established use of the premises and uncontrolled opening hours as part of the planning permission. The advice of the District Council EHO, therefore, reflects vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
  10. Having regard to the above and based on the evidence before me, it should have been apparent to the National Park Authority that the advice it was relying upon in making its decision had not been substantiated relative to the technical evidence provided by the applicant. I, therefore, consider that the National Park Authority acted unreasonably in preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. In this respect, the National Park Authority has also failed to produce evidence to substantiate a reason for refusal on appeal.
  11. The unreasonable behaviour identified above, has resulted in wasted expense for the applicant in terms of the preparation of the appeal and accompanying evidence.

## **Conclusion**

12. I conclude that a full award of costs, to cover the expense incurred by the applicant in contesting the appeal is justified.

### **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 the Peak District National Park Authority shall pay to Peter Brett Associates, the costs of the appeal proceedings described in the heading of this decision; such costs are to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Gareth Wildgoose*

INSPECTOR