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## Costs Decision

Site visit made on 10 December 2018

**by J Ayres BA Hons, Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 January 2019**

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### **Costs application in relation to Appeal Ref: APP/G1250/W/18/3193984 Pro Hand Car Wash, 1053 Wimborne Road, Bournemouth BH9 2BY**

- 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 Mr D Ramazan for a full award of costs against Bournemouth Borough Council.
  - The appeal was against the refusal of planning permission for alterations, erection of jet wash bays, relocation of portable building and canopy, change of use of land to car wash and erection of 1m high wall to close exit to Hillcrest Road without complying with a condition attached to planning permission Ref 7-2014-1721-Y (appeal ref APP/G1250/W/15/3013850).
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### **Decision**

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

### **Reasons**

2. The basis of the appellant's application relates to the failure of the council to substantiate its reasons for refusal, with particular reference to not visiting the site, and therefore not assessing the volume of the vacuum cleaners or providing independent noise evidence to refute the appellant's evidence.
3. The appellant has previously submitted an application to vary condition 8 attached to the decision letter of the inspector issued in respect of Appeal ref APP/G1250/W/15/3013850. As part of that application the appellant included a Technical Note Ref KR0503 to assess noise levels. The application was refused and the appellant submitted an appeal which was subsequently dismissed. The inspector in determining that appeal (Ref APP/G1250/W/16/3163066) did not take account of the Technical Note.
4. The appellant chose not to challenge the legal validity of that appeal, but to instead re-submit an application to the planning authority to deal specifically with the number of vacuum cleaners permitted on the site. That application contained the original noise assessment.
5. The Council in determining this application to vary condition 8 relating to the number of vacuum cleaners considered the comments made by the Inspector in regards to APP/G1250/W/16/3163066, and the further technical advice of the officers of the council. Officers identified concerns regarding the noise assessment, and also took account of the representations of local residents. As part of the council's assessment of the application it identified its concerns

- regarding the increase in overall activity that the variation of the condition may lead to.
6. The Council's reason for refusing the application was not based solely upon the increase in noise in relation to the vacuum cleaner itself. The Council took the view that the increase in the number of vacuum cleaners would intensify the use such that it would result in a harmful level of disturbance to neighbouring occupiers. These concerns were raised through general knowledge and observations of the site, for which it would not be necessary to undertake a formal site visit to observe the noise of the vacuum cleaners in isolation. The council members were entitled to attach significant weight to the representations made by local residents in this regard and have substantiated these concerns within the statement of case. The council identified discrepancies within the Technical Note, however it did not dispute that the overall increase in the level of noise directly related to the vacuum cleaners would be limited. The basis for the Council's case related to the intensification in use. Taking this into account I do not consider that the Council acted unreasonably by not providing its own noise assessment.
  7. I have determined the appeal based on the impact of an additional vacuum cleaner on both noise levels and the overall use of the site. Whilst I have reached a different conclusion to the council I am satisfied that it provided evidence to substantiate its reason for refusal.
  8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*J Ayres*

INSPECTOR