



Costs Decision

Site visit made on 16 September 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Costs application in relation to Appeal Ref: APP/V4630/W/19/3232283 Halliwell Funeral Service, 63 Norton Road, Pelsall WS3 4NR

- 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 Tamworth Co-operative Society Limited for a full award of costs against Walsall Metropolitan Borough Council.
 - The appeal was against the proposal to delete condition No 3 of planning application Ref 07/2688/FL/E9 in regard to planning permission for the retention of hardstanding.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) 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. The costs application essentially relies on the fact that the Council has failed to provide evidence to substantiate its case and has made assertions which were unsupported by objective analysis. It also claims that the Council has consequently prevented and delayed development which should have been permitted. The Guidance is clear that a Council could be vulnerable to an award of costs against it if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The case was presented to Planning Committee with an officer recommendation of approval. It was also subject to the benefit of a Noise Survey and no objection from the Council's Environmental Health Officer. A neighbouring objector and the applicant to the proposal were given an equal opportunity to comment on the anticipated effects of the proposal. Notwithstanding the advice of professional officers, Council Members were entitled to reach a different conclusion. However, being entirely reliant on the evidence given by an objector was insufficient to illustrate that the Council came to a balanced decision. The evidence given by the resident was not objective.
5. When Planning Committee heard from speakers, a discussion then took place and questions were asked to both the objector and applicant. There is no evidence that the Noise Survey conclusions were found to be suspicious, either during discussion or in the Council's evidence when defending the refusal. In fact, the minutes record that the Planning Committee sought further

reassurance that the Environmental Health Officer was satisfied with it. Consequently, the minutes reiterate that officers were content that the Noise Survey analysis was robust and considered. Therefore, in concluding that the proposal would result in detriment to the living conditions of the neighbour and local residents the position was taken without reasoned objective analysis.

6. I therefore find that the Council has failed to provide substantive evidence to demonstrate that the proposal would have a harmful effect on the living conditions of nearby residents. Furthermore, the Council has not challenged the findings of the Noise Survey to undermine its veracity.

Conclusion

7. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the Planning Practice Guidance, has been demonstrated. Consequently, an award of costs, to cover the expense incurred by the appellant in preparing and submitting an appeal against the reason for refusal, is justified.

Costs Order

8. In the 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 the Walsall Metropolitan Borough Council shall pay to Tamworth Co-operative Society Limited, the full cost 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.
9. The applicant is now invited to submit to Walsall Metropolitan 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.

Ben Plenty

INSPECTOR