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## Costs Decision

Site visit made on 29 January 2020

**by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI**

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

**Decision date: 03 March 2020**

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### **Costs application in relation to Appeal Ref: APP/H4505/W/19/3221736 Team Valley Retail World, Tenth Avenue, West, Team Valley, Gateshead NE11 0BD**

- 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 Team Valley S.a.r.l for a partial award of costs against Gateshead Council.
  - The appeal was against the refusal of planning permission for the erection of a food and drink unit (Use Class A3/A5).
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### **Decision**

1. The application for an award for costs is dismissed.

### **Reasons**

2. The Planning Policy Guidance note advises that irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Sometime in 2019 the Council submitted its Statement of Case in defence of its decision made 3 October 2018 to refuse planning permission for the development of a new unit to be used for A3 restaurant / A5 hot food takeaway at Team Valley Retail World. Its Statement of Case extended to 93 pages of print. According to the applicant, it contained around 23,000 words, an estimate I agree with. In addition, it submitted 22 appendices. In contrast, the Statement of Case submitted by the applicant extended to no more than approximately 13 pages which I estimate to be around 3,000 words.
4. Guidance on the conduct of planning appeals is set out in the 'Procedural Guide: Planning Appeals – England' ('the Procedural Guide') authored by the Planning Inspectorate. Annex J sets out guidelines for all parties concerning the content and length of a Statement of Case. It states that a Statement of Case prepared by either the Council or the appellant should not normally exceed 3,000 words. Where this advisory limit is exceeded the guidance goes on to say that the Statement of Case should be concise.
5. The Council's document clearly exceeded the advisory maximum length. It could have been expressed more concisely. For example, the analysis of the various appeals could have been reduced considerably. I also found some of the rebuttal arguments unduly lengthy.

6. However, I do note that it was the applicant's preference to have the appeal determined by way of a hearing because it considered that the issues needed to be properly tested. I have found the issues raised by this appeal, concerning as they do the relationship between planning policy, planning decision making and health, to be highly complex. This complexity is illustrated most obviously by the large number of quite lengthy peer reviewed academic articles that have been submitted as part of this process.
7. Thus, whilst I recognise that the Council's Statement of Case was many times in excess of the guideline maximum and was not concise, I am not persuaded that it constituted unreasonable behaviour which caused the applicant to engage in wasted expenses.
8. The requirement to submit and respond to a Statement of Common Ground applies only when the appeal is to be determined through a hearing or an inquiry (see Annex S of the Procedural Guide). The purpose of the Statement of Common Ground is to provide an agreed basis of the issues that the hearing or the inquiry needs to focus on and so eliminate wasted time considering any irrelevant matters.
9. Thus, as the requirement for the parties to prepare and agree a Statement of Common Ground does not apply to the Written Representations procedure, I find that the Council was correct to ignore this matter. It follows therefore that the Council did not act unreasonably and that the applicant was not put to unnecessary expense by the Council's behaviour.
10. The Council's reason for refusal did not cite the need for the applicant to submit a Health Impact Assessment (HIA). Nevertheless, it did state that the proposal was contrary to the guidance in the Council's Hot Food Takeaway Supplementary Planning Document (SPD) which contained 12 'considerations' which it would exercise when determining an application for the development of a hot food takeaway. One of these (Consideration No 12) was the need for an applicant to submit an HIA.
11. In its officer's report it concluded that although the applicant adopted the Council's advised template for such a study, the document submitted by the applicant purporting to be an HIA did not meet its expectations in terms of the quantity and quality of information provided. Since Consideration 12 had been subject to some discussion in the officer's report, and since it related to establishing the effect of unhealthy food on those who purchased it, I think that it is reasonable to conclude that the HIA issue was to be explored during the appeal.
12. In stating that the material submitted did not amount to an HIA the Council set out at paragraph 5.18 of its Statement of Case what it would have expected the applicant to have included. Specifically, the Council expected a description and analysis of how the development proposal would affect the diet and nutrition of customers. This would include details about the foods typically consumed in its other franchised restaurants and the healthy eating options that it would provide. The health effects of these consumption choices could be evidenced by drawing upon the findings of academic and other studies.
13. Consequently, I believe that the Council did make it clear in its Statement of Case, first, that the applicant's HIA submission was not acceptable and, second, what further information was required to allow the Council to evaluate

properly the effect that the proposal would have upon the those who patronised the establishment.

14. I note that the applicant submitted a Final Comments document. In this the applicant responded to the various arguments made by the Council. The response included several academic papers containing investigations on, and reviews of other studies examining, the linkages between diet and land use planning. These have been considered in my decision.
15. Thus, it seems to me that by virtue of the submissions made in the Final Comments the applicant recognised that the Council had not changed its view that the initial HIA had not contained the information that it considered necessary to make an informed decision. The inclusion of academic papers was an attempt to respond to the deficiencies in the initial submission. Consequently, I do not accept that the Council behaved unreasonably or that the applicant was put to unnecessary expense in providing this information.

**Conclusion**

16. For the reasons set out above the application for costs is dismissed.

*William Walton*

INSPECTOR

