The Planning Inspectorate

Costs Decision

Site visit made on 28 May 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2020

Costs application in relation to Appeal Ref: APP/W3330/W/19/3243730
Fairfield Stables, Moor Lane, Churchinford TA3 7RW.

- 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 Ms S Lock for a full award of costs against Somerset West and Taunton Council.
- The appeal was against the refusal of planning permission for the erection of dog kennel and log store.

Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice 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 applicant seeks a full award of costs because the Council has acted unreasonably in the way it determined the application. In summary, the case is made that kennels have been justified acceptable at appeal where the key issue was the effect of noise disturbance on the Blackdown Hills Area of Outstanding Natural Beauty (the AONB) with particular regard to tranquillity. This is very similar to the reason for refusal, the appeal giving clear guidance on this matter and it is explained that dog numbers have not increased since the appeal.

4. It is argued that the planning officer, after examining the case in detail over 5 months, including the acoustic report, made a clear recommendation for conditional approval. The Committee has acted unreasonably by going against officer recommendation without any clear justification and this has led to unnecessary costs of taking the matter to appeal.

5. The Council has responded to explain that the Committee members were aware of the appeal decision and the assessment of noise but considered the application had further implications arising from the scale of the development in terms of increased noise footprint and also the location of the building in relation to existing residential properties. It is argued that in these circumstances the Council has not behaved unreasonably and consequently there was no unnecessary or wasted expense in the appeal process.

6. The Planning Practice Guidance explains that an example of unreasonable behaviour is when a Council make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

7. In this case the scheme was subject to a previous appeal where the impact on the tranquillity of the AONB was considered. A Sound Impact Assessment was submitted by a qualified professional with the present scheme. I have given significant weight to this Assessment and its findings, although I have noted that the advice of the Environmental Health Officer after studying the Assessment was that it was not possible to confirm whether or not the noise from the kennels will lead to an unacceptable increase in noise levels in the area. Furthermore, there is the experience of the site operating since the appeal decision with the views of local residents raising concern with the noise of the dogs. Also, the proposed kennels would be closer to the nearest neighbouring residential property than the existing main kennel building.

8. All this, to my mind, allowed the Committee to form a view that there was uncertainty regarding the potential noise impacts related to the position of the additional kennel building. Taking a precautionary approach in refusing the application was not without some foundation and the totality of information available allowed for a matter of judgement to be exercised on this issue. The Council's case at appeal was limited in extent. However, given the overall information available, especially the advice from the Environmental Health Officer who had analysed the Assessment, I consider, notwithstanding my overall conclusion, that the judgement of the Council was supported by some analysis that was not vague, generalised or inaccurate such that it could not be considered to be unreasonable.

9. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case and consequently the applicant was not put to unnecessary or wasted expense in the appeal process.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR