



Costs Decision

Site visit made on 30 November 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2020

Costs application in relation to Appeal Ref: APP/V4630/W/20/3258479 74 Cannock Road, Willenhall, WV12 5RZ

- 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 Evaldas Zukas for a full award of costs against Walsall Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the change of use for the external display and sale of motor vehicles, including preparation.
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Decision

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

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 alleges 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 had received no objection from the Highway Engineer. When Planning Committee heard from the objector, a discussion then took place and questions were put to officers. This resulted in Members taking a different position to that recommended by officers and the proposal was refused. Notwithstanding the advice of professional officers, Council Members were entitled to reach a different conclusion.
5. However, the evidence given by the objector appeared to relate to a time when car transporters were being used to set up the site. The appellant has explained that this was a moment in time and did not reflect the normal nature of the business. Furthermore, I understand that the lawful use of the site was for storage and distribution. The former use seemed to be unregulated by planning conditions. Accordingly, limited regard appears to have been made to

the impact of such a use continuing in this context or the benefits of the proposed low-impact regulated use.

6. Moreover, the Council did not challenge the appellant's visitor frequency survey, the tracking plan or the general layout of the site. Also, the Council's concern as to the Operational Management Plan (OMP) being adhered to by condition appears to relate more to the effort required to enforce the condition rather than its enforceability. In contrast, I have found the specifications described by the OMP can be suitably defined by condition and this would pass the necessary tests of paragraph 55 of the National Planning Policy Framework.
7. Furthermore, Planning Committee sought further reassurance from the Highway Authority as to the anticipated impact of the proposal. Nevertheless, the minutes record that the highway officer reiterated their conclusions in the report again raising no objection. Therefore, being heavily reliant on the evidence given by an objector, was insufficient to illustrate that the Council came to a balanced decision taking the merits of the proposal into account. The Council's position was therefore taken without reasoned objective analysis or a meaningful effort to gather any.
8. Consequently, the Council has failed to provide substantive evidence to demonstrate that the proposal would have a harmful effect on highway safety.

Conclusion

9. 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 reasons for refusal, is justified.

Costs Order

10. 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 Mr Evaldas Zukas, 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.
11. 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