The Planning Inspectorate

Costs Decision

Site visit made on 26 February 2021

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 17th March 2021

Costs application in relation to Appeal Ref: APP/C1760/W/20/3261670 Hampshire Dog Club, Cobra Lodge, Upton Lane, Nursling, Southampton, SO16 0YB

- 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 Sean Knowlson for a full award of costs against Test Valley Borough Council.
- The appeal was against the refusal of planning permission for the Use for Overnight Boarding for Up to Six Dogs.

Decision

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

Reasons

2. The application for costs was made in writing within the prescribed period. The application is for a full award of costs.

3. The applicant says that the Council has acted unreasonably by coming to a contrary opinion to that of the Planning Officer unsupported by any objective evidence or analysis and that this has caused an unnecessary appeal.

4. The planning application was recommended for approval by planning officers and the applicant argues that had it not been referred to Committee by the local ward member it would have been approved. He says the case officers report confirmed the Councils Environmental Health Officer (EHO) had no concerns and concluded that there would be no significant noise impact. Moreover, the committee could have deferred consideration to enable a noise assessment to be submitted to allow an objective analysis, this they chose not to do.

5. The Planning Officers' report exercised a professional judgement based on the evidence arising from consultation responses and the information contained in the application. The internal processes allowed for a referral to Committee following a ward member request and this led to the Committee considering the application. The Council was entitled to disagree with the officer recommendation and set out the reasons for that conclusion. It is neither unusual nor irregular for planning committee members to overturn a recommendation before them, indeed this is part of the nature of decision making particularly where members are unconvinced by the information before them.

6. Mention has also been made regarding conclusions about the management of the kennels and the consequences of noise disturbance from dogs escaping. The Committee pursued this even though the professional advice of the EHO did not raise an objection and the establishment has been licenced for overnight boarding and given a five-star rating by the Council. That may be so, however the EHO licence is under different legislation and whilst it is a consideration in relation to the planning use of the site for overnight boarding of dogs, it does not necessarily follow that the granting of the licence would automatically mean planning permission would be granted.

7. The Council state that the planning committee members were knowledgeable about the planning history of the site and therefore had a good understanding of the operation of the dog kennels. They also had the benefit of considerable local input and elected members were representing their views. Moreover, they did not have the noise assessment or information about the management of the business as part of the planning application.

8. Whilst the noise report provided empirical evidence this was not known to the Council at the time of its decision, had the information been supplied prior to the committee meeting then the outcome may have been different.

9. It seems to me that it was necessary for the applicant to provide a noise assessment to support his appeal particularly in demonstrating the noise levels which would be experienced at night from Grove Place. Whilst the noise assessment is a material piece of information it does not mean that this was an unnecessary or wasted expense for the applicant. Indeed, had it been supplied earlier in the process it may have led the Committee to an alternative conclusion which would have removed the need for an appeal.

10. The Planning Practice Guidance (PPG) makes it clear for costs to be awarded unreasonable behaviour must have caused the party applying for costs to incur unnecessary or wasted expense during the appeal process. As the noise assessment was an important piece of information in relation to the appeal, I do not regard it as a wasted or unnecessary expense.

11. For the reasons set out it has not been demonstrated that the Council has behaved unreasonably in the appeal process as set out in the PPG. It cannot therefore follow that the applicant has incurred unnecessary or unreasonable expense. The application for an award of costs is therefore not justified.

J Wilson

INSPECTOR