
Costs Decision

Site visit made on 20 April 2021

by J P Longmuir BA (Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2021

Costs application in relation to Appeal Ref: APP/P1805/W/20/3263967 30 The Avenue, Rubery, Rednal, Birmingham B45 9AL

- 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 Wahid Ch of Adams Food Services Ltd for a full award of costs against Bromsgrove District Council.
 - The appeal was against the refusal of the grant subject to conditions of planning permission for the retrospective change of use from B1 (light industrial) use to B8 (storage and distribution) use and erection of associated cold storage facilities to the rear of the premises.
-

Decision

1. The application for an award of 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 considers that the noise report (NR) was totally ignored by the Local Planning Authority and they wanted to appease local residents. They failed to understand the history of the site and the measures which could have overcome the concerns of local residents, including noise management and lighting. The applicant's rebuttal comments stress the technical officer for noise had no objection, the Council did not work proactively to seek a solution, the committee did not understand the needs of the business and the history of the site. Conditions would have made the proposal acceptable.
4. The Council respond by highlighting that the NR was referenced in the officer report and at the committee meeting as the minutes confirm. They add that enforcement action could have been taken but instead they allowed the application process to follow its course. The case officer was fully aware of the site history and the suggested mitigation measures.
5. The case officer's report begins with the description of the proposal, within which there is mention of the NR and a subsequent paragraph describes its recommendations. Under the section titled 'residential amenity' the report then considers these recommendations. The final conclusion of the report also acknowledges the NR.

6. The committee minutes do make mention the NR and its recommendations. The minutes show that the possible mitigation measures were also discussed and debated. Furthermore, the debate extended into whether additional measures could make the proposal acceptable.
7. The case officer report also covers the history of the site and had regard to it. Similarly, the minutes indicate that the committee understood the needs of the business and the site's characteristics. They tried to balance the impact of the proposal with the benefits of the business to the local economy.
8. Whilst I did not conclude in favour of the Council, the NR findings had to be applied to the nature of B8 operations, the particular nature of the residential surroundings and the nature of the site. The appropriateness and effectiveness of possible conditions then had to be considered. These are not aspects of exact science but rather matters of judgment and the Local Planning Authority were entitled to come to their view.
9. The Council did not initiate enforcement proceedings and allowed the application process to go its due course. This did leave the opportunity for discussion on conditions, but it is clear from the appeal submissions that there was not clear agreement. Therefore, the use of conditions would not have simply remedied the dispute between the parties.
10. The lighting aspect was not mentioned in the reason for refusal, and the Council have accepted it could be covered by condition.

Conclusion

11. For the above reasons I conclude that the Council has not acted unreasonably, and that the applicant has not been put to wasted time and expense in pursuing the appeal. Therefore, an award of costs as described in the Planning Practice Guidance is not justified.

John Longmuir

INSPECTOR