



Costs Decision

Site visits made on 2 and 27 September 2021

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2021

Costs application in relation to Appeal Ref: APP/W4515/W/21/3279311 Hadrian Yard A B And C, Hadrian Way, Wallsend NE28 6HL

- 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 Chris Edwards (Smulders Projects UK) for a full award of costs against North Tyneside Metropolitan Borough Council.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted for the erection of 2no gantry cranes and 1no ringer crane.
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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 where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Applications for an award of costs may be made on procedural or substantive grounds. The Guidance is clear in setting out the circumstances in which a Council could be vulnerable to an award of costs against it.
3. The Council, the claim sets out, acted unreasonably in going against the advice of its professional officers without good reason and then failed to substantiate the reason for refusal with technical or substantive evidence to counter that submitted by the appellant.
4. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why the proposal is unacceptable and provide clear evidence to substantiate that reasoning. As I have explained in my decision on the planning merits, I do not doubt the problems that nearby residents have encountered and the uneasy relationship between the industrial activities at the appeal site and nearby residential areas.
5. However, the appellant has demonstrated, as required by one of the disputed conditions, that the rating level of the operation of the gantry crane would not exceed background noise levels. The appeal site is already able to operate without restriction around the clock and many of the comments received in relation to the application and appeal appear to refer to the current state of affairs as much as to the operation of the gantry crane.

6. I understand the role of the Council's planning committee in seeking to reflect the views and experiences of nearby residents. However, I am not persuaded that the Council's decision was based on any substantive or technical evidence to demonstrate that the variation or removal of the disputed conditions would result in additional noise disturbance or harm to the living conditions or local residents.
7. Thus, in the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and guidance and other material considerations, that the application to vary the permission in the manner sought should reasonably have been permitted. The refusal to do so therefore amounts to unreasonable behaviour contrary to the guidance set out in the Guidance and the Framework. As such, the appellant has been faced with the unnecessary expense of lodging the appeal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

9. In 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 that the North Tyneside Metropolitan Borough Council shall pay to Mr Chris Edwards (Smulders Projects UK), the costs of the appeal proceedings in relation to the disputed condition described in the heading of this decision.
10. The applicant is now invited to submit to the North Tyneside 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Graeme Robbie

INSPECTOR