

Costs Decision

Site visit made on 5 and 24 January 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2022

Costs application in relation to Appeal Ref: APP/H0738/W/21/3284623 342 Norton Road, Norton TS20 2PN

- 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 M Knowles and Mr P McGowan for a full award of costs against Stockton-on-Tees Borough Council.
- The appeal was against the refusal of planning permission for use of former taxi base for breeding of dogs.

Decision

1. The application is refused.

Reasons

2. Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only 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. 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. Whilst 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 a proposal is unacceptable and provide clear evidence to substantiate that reasoning. The Council has not responded to the appellant's grounds for making an application for an award of costs.
4. In this case I have noted the recommendation of the Council's officers. I note too, the conclusions of the appellants' Noise Impact Assessment¹ (NIA) in setting out mitigation measures for the control of noise arising from the dog breeding use and the absence of objection to the proposal from the Council's Environmental Health Unit having had regard to the findings of the NIA.
5. The Council have not put forward any technical evidence to support the decision to deviate from the professional advice provided. However, I am not persuaded that in so doing there was a reliance by the Council upon vague, generalised or inaccurate assertions about the proposal's impact.
6. Although I do not agree with the Council's decision in this instance, I am satisfied that the Council's case was clearly put at appeal. The Council's committee members were entitled to take the decision that they did given the

¹ Apex Acoustics 'Dog Breeding Establishment, Norton Road, Stockton-on-Tees' Ref 7775.1 Revision B dated 14 January 2021 and Apex Acoustics Memo No: 7775.M2B dated 12 May 2021

expressions of concern and objection raised by local residents who live close to the appeal site and the dog breeding operation for a number of years and have experienced its operation.

7. Nevertheless, for the reasons set out in my decision I am satisfied that the submitted scheme would not cause undue harm to the living conditions of nearby residents and that the matters central to the appeal can be dealt with by way of condition and that, as a consequence, the development should be permitted. This does not amount to unreasonable behaviour by the Council, however, as appellants seek to argue, and as such there can be no question that the appellants were put to unnecessary or wasted expense.

Conclusion

8. For the reasons set out, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

G Robbie

INSPECTOR