



---

## Costs Decision

Site visit made on 7 February 2022

**by M Ollerenshaw BSc (Hons) MTPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 April 2022**

---

### **Costs application in relation to Appeal Ref: APP/M4320/W/21/3283843 42 Station Road, Ainsdale PR8 3HW**

- 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 Ken Tilley for a full award of costs against Sefton Metropolitan Borough Council.
  - The appeal was against the refusal of planning permission for erection of canopy, outdoor seating with planter demarcation.
- 

### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, in either a substantive or procedural way, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant claims that the Council has failed to substantiate with evidence the first reason for refusal, and gave undue weight to objections from residents who had not previously complained of noise and disturbance to the appropriate authorities. Consequently, the applicant was put to unnecessary costs in appealing the decision but also in employing a noise consultant to undertake an acoustic assessment.
4. With regard to the second reason for refusal, the appellant states that the Council made vague and generalized assertions about the impact of the design and appearance of the proposal, which were unsupported by any objective analysis, and failed to identify why this would give rise to any harm to planning policy objectives. The applicant notes in particular that councillors reached a different conclusion to officers in relation to the design of the proposal and its effect on character and appearance.
5. I appreciate that the Environmental Health Manager did not object to the effect of the proposal on neighbours as a result of noise and disturbance. However, it is the role of Environmental Health to provide advice to the Council and it is for the Council to take this into account when reaching its decision. The Council did not present any technical evidence in relation to noise and disturbance. However, the Council's statement of case clearly sets out the Council's concerns and so its stance is not made without substantiation. Moreover, the PPG: Noise section also recognises that noise has a subjective element to it and

there is not a simple relationship between noise levels and the impact on those affected. Hence, this is not a planning consideration which relies solely on a technical assessment.

6. The Council's concerns which were not unreasonable given the proximity of dwellings to the appeal site. That there may have been no noise complaints from nearby occupiers does not necessarily mean that the development should be considered acceptable, and a number of nearby residents did object during the application process. Although in my decision I found that there would not be harm as a result of noise and disturbance, I do not consider that the Council acted unreasonably in refusing the application on the basis of the information available to it at the time.
7. An element of judgement is required in making a planning decision where design and effects on character and appearance are concerned. The Council's officer report and statement of case clearly set out its reasoning for finding harm in respect of these matters. Whilst there are no specific local policies or design guidance relating to outdoor canopies nor policies seeking to preserve the open character of the area, the Council identified that the proposal was contrary to Policy EQ2 of the Local Plan which seeks to ensure that development responds positively to local character.
8. I acknowledge that councillors reached a different view to officers in relation to the previous application<sup>1</sup>. However, this in itself cannot be considered as unreasonable behaviour and costs can only be considered in relation to the appeal process of the application which was refused, not an earlier one.
9. The Council's decision stands scrutiny relative to the statutory approach to decision-taking. The dispute was a matter of planning judgement, rather than the applicant being forced into an appeal by consequence of unreasonable behaviour. It therefore follows that I cannot agree that the Council behaved unreasonably in preventing a development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. As such there can be no question that the applicant was put to unnecessary or wasted expense.

## **Conclusion**

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

*M Ollerenshaw*

INSPECTOR

---

<sup>1</sup> Council ref DC/2020/01149