
Costs Decision

Site visit made on 4 April 2022

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2022

Costs application in relation to Appeal Ref: APP/F0114/W/21/3281221 Unregistered Units 1-4, Old Station Yard, Avon Mill Lane, Keynsham BS31 2UG

- 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 Jamie Britt on behalf of 4Concrete Bristol Ltd for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of planning permission for the erection of 3no. acoustic barriers; permission to allow the filling of concrete mixing vehicles between 6:30am and 5:30pm (Monday-Friday) 8:00am-1:00pm Saturday and 7:30am-5:30pm (Bank Holidays); permission to allow other specified operations at the site between 7:30am and 6:30pm (Monday-Friday) and 8:00am and 1:00pm (Saturday) and 7:30am-5:30pm (Bank Holidays); and permission to store materials in external yard area (re-submission of planning application 20/02008/FUL).
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Decision

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

Reasons

2. Planning Practice 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.
3. The applicant has alleged that the Council behaved unreasonably by being inconsistent in its approach to decision making, and by refusing planning permission in the absence of substantive evidence to support its decision.
4. I am aware of a 2020 planning permission¹, where intended time-restricted operations of the same description to those listed in the banner heading above were permitted. However, a materially different arrangement of acoustic barriers of greater cumulative extent and overall height were then under consideration. The future performance of the revised barrier scheme is intrinsically linked to the effect of extending operating hours, which legitimises the absence of any direct reference to acoustic barriers in the Council's refusal reason. Moreover, an inconsistent approach to decision making has not been demonstrated.
5. A professionally produced noise report² which indicates that the intended mitigation measures would provide no significant improvement over and above

¹ 20/02008/FUL

² Noise Study Report, Acoustic Consultants Ltd, Version 2.0, May 2021

current circumstances was before the Council at planning application stage, as were numerous often detailed objections from local residents which reference recent experiences and challenge the case made by the applicant.

Notwithstanding the conflicting findings of the applicant's own noise report and the positive outcome of the planning appeal, I find that it was not unreasonable for the Council to resolve to refuse planning permission.

6. Indeed, as will be seen from the planning appeal decision, extended operating hours have been permitted on a temporary trial basis to allow the effectiveness of the permitted mitigation measures to be assessed/monitored across an initial one-year period. This outcome signals that development was not prevented or delayed that should clearly have been permitted.
7. For the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. Thus, having had regard to all matters raised, an award of costs is not justified.

Andrew Smith

INSPECTOR