



Costs Decision

Site visit made on 26 July 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2022

Costs application in relation to Appeal Ref: APP/W3005/W/21/3289749 60 Portland Road, Selston, Nottingham, Nottinghamshire NG16 6AT

- 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 K Quickfall for a full award of costs against Ashfield District Council.
 - The appeal was against the refusal to grant planning permission for change of use from post office, shop and off licence to post office, shop and café/micro pub without complying with conditions subject to which a previous planning permission was granted.
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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 appellant has submitted an application for a full award of costs and the Council has been given the opportunity to respond. Although the Council have not responded, I consider that I have sufficient evidence on which to reach a conclusion on the costs application.
4. The appellant's first ground is that the Council's reason for refusal is vague and unsupported by objective analysis. The appellant has provided technical evidence consisting of a Noise Impact Assessment (NIA) which sought to address concerns relating to noise and disturbance raised by the Council and third parties. In contrast, the Council's consideration of this issue is relatively subjective.
5. However, it is the appellant's evidence of the NIA which I have found not to be sufficiently robust. Even given the subjective nature of the Council's consideration of noise, considered objectively and in context I have concluded that the Council's concerns are well-founded and I have dismissed the appeal. I therefore cannot agree that the Council has behaved unreasonably on this ground.
6. The second ground relates to the manner in which the application was handled by the Council. The appellant refers to a lack of communication from the Council leading up to its decision, and submits that better dialogue could have resulted in a positive determination or more clarity on the reason for refusal.

7. However, even if further dialogue had taken place I am not confident that the Council's concerns could have been overcome. Due to the close-knit relationship between the appeal site and residential properties, I have concluded that noise and disturbance could not be mitigated through planning conditions. Although the comments from the Environmental Health Officer were only made available to the appellant after the Council's decision, it has not been demonstrated that the appellant would have been able to satisfactorily address the concerns of that consultee.
8. The Council has also clearly set out its concerns on noise and disturbance in the Council's officer report and its reason for refusal, so that the appellant had sufficient opportunity to make an informed decision in terms of whether they should pursue the appeal.
9. In conclusion on the second ground, the Council's handling of the planning application does not represent unreasonable behaviour which has led to the appellant incurring unnecessary expense in progressing this appeal. In particular, this has not led to an appeal which could otherwise have been avoided.
10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not therefore justified.

David Cross

INSPECTOR