



Costs Decision

Site visit made on 23 May 2024

By Anne Jordan BA Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2024

Costs application in relation to Appeal Ref: APP/F0935/W/24/3340021 New Balance Athletic Shoes (UK) Ltd, Flimby, MARYPORT, CA15 8RX

- 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 New Balance Athletic Shoes (UK) Ltd for a full award of costs against Cumberland Council.
 - The appeal was against the refusal of planning permission for erection of 1MW Wind Turbine (75m Tip Height).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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's application for an award of costs relies to a substantial extent on the fact that the Planning Committee failed to accept the views of its professional officers to grant permission, and the view that the Council subsequently failed to substantiate the reasons for refusal by objective analysis at appeal. As a result, the appellant contends that the Council acted unreasonably and that unnecessary or wasted expense was incurred as a result. Planning Committee Members are not bound to accept the recommendations of their officers. Nevertheless, reasons for refusal should be substantiated and based on relevant evidence. The Council refused the proposal with a single reason for refusal that covered a number of aspects which I will deal with in turn below.
4. The first aspect of the reason for refusal referred to potential impacts on residential amenity arising from the development. The policies referred to – S19 a(i) and S32 (a & b) refer variously to noise and shadow flicker. The Council statement asserts that impact will occur due to the proximity of the proposed turbine to the residential dwellings but provides no evidence to support this and does not explain how this view was arrived at, in direct contradiction of the Council's Environmental Health Team. Neither does the Council provide any cogent response to the technical evidence supplied by the appellant in the form of Shadow Flicker and Noise Assessments. The relevant policies also refer to visual amenity and although the Council refer to visual amenity in their statement, no explanation of harm is provided. Taken in the round the Council failed to quantify in any meaningful way the effects of the

proposal on residential amenity and so on this matter failed to substantiate their reason for refusal at appeal.

5. The second concern related to ecological impacts. The view taken by members directly contradicted the ecological evidence supplied with the scheme and the advice of officers without any convincing evidence as to how this view was arrived at and so again, the Council failed to substantiate their reason for refusal at appeal.
6. The third aspect of the refusal relates to public safety as the factory would lie within the acknowledged topple distance of the development. I have concluded that the risk of such an event would be effectively mitigated, based in part on the submissions of the appellant at appeal. Therefore, I cannot conclude that Committee Members were entirely unreasonable in voicing concerns in this matter, which were also the concerns of some local residents.
7. Finally, the Council also took the view that the scheme lacked community support. Although this matter has been overtaken by changes in legislation, it was relevant at the time the decision was made. At that time, at application stage, community views on the scheme appear to me to have been relatively finely balanced. Nonetheless the Council adopted a dogmatic approach to interpreting the Framework, which failed to take account of the Written Ministerial Statement of the 5th of September 2023, which made clear that a limited number of objections should not be interpreted as a lack of community backing. Accordingly, I find that the Council's position in this regard to have been unreasonable.
8. The Council therefore acted unreasonably in relation to all but one aspect of the reason for refusal. It follows that on all matters other than the "topple distance" it was unreasonable for the Council to refuse planning permission. Accordingly, all of the costs associated with those aspects of the appeal were unnecessary. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial 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 Cumberland Council shall pay to New Balance Athletic Shoes (UK) the costs of the appeal proceedings described in the heading of this decision, other than the cost associated with producing and providing the "Wind Turbine Risk Assessment", and Appendix 7 - 22-1266-r02 - New Balance Factory Rev A relating to ground stability. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Cumberland Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Anne Jordan

INSPECTOR