Application for Costs

FORMER BRIGHAM AND COWAN DOCK 4 ENTRANCE, LONG ROW, SOUTH SHIELDS, NE33 1JA

1.0 Introduction

1.1 We are applying on behalf of the appellant to seek an award of costs against South Tyneside Council ("the LPA") on the grounds of unreasonable behaviour, which has caused the appellant to incur unnecessary expense in the appeal process in relation to requests for a variation to the wording of condition 6 of previously approved planning application ST/0353/20/FUL to allow for the mooring of safety vessel(s) or those engaged in educational use, in addition to the mooring of recreational leisure boats already permitted at Former Brigham and Cowan Dock 4 Entrance, Long Row, South Shields, NE33 1JA (LPA Ref. ST/0838/23/VC).

1.2 National Planning Practice Guidance (NPPG) confirms that all parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

1.3 NPPG sets out the aims of the costs regime, which includes ensuring that LPAs properly exercise their development management responsibilities, to only rely on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay.

1.4 NPPG goes onto advise that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by

unreasonably defending appeals. A number of examples of such behaviour are provided including the following:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
- not determining similar cases in a consistent manner;
- refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead;
- acting contrary to, or not following, well-established case law.

1.5 It is the appellant's firm contention that the LPA have acted unreasonably in failing to grant planning permission for the proposed development and failing to determine the application in the first place, as such, an award of costs would be entirely justified in this instance.

2.0 Justification for Costs Award

2.1 As detailed within the appellant's submitted Statement of Case and final comments, the application was heard at the 17th June 2024 Planning Committee meeting with a positive recommendation for approval. An extension of time was agreed until this date between us (the agent) and the case officer until said committee date. The Planning Committee subsequently voted to defer the application until such time as the DMMO application has been determined, with 6 in favour, 5 against and 1 abstention.

2.2 Subsequently the LPA have, in their Statement of Case set out their reasoning on grounds of impact on residential amenity.

Residential Amenity:

2.3 The LPA state that the proposals would be contrary to Local Development Framework (LDF) Development Management Policy DM1 (B) which states that in determining applications the Council will ensure that, the development is acceptable in relation to any impact on residential amenity. In considering the proposal's impact on residential amenity the Senior Planning Officer's report stated that:

> *"The applicant has provided further detail regarding the safety and educational boats referenced above. These would be small leisure type craft that would not be outwardly distinguishable from any other leisure craft. The educational boats would use the site infrequently (typically once per month). It is envisaged that these would generally be engaged in activities away from the marina. These boating activities are likely to be undertaken during the working day and will be conducted and controlled and supervised manner so as not to create unacceptable levels of noise and disruption to residential amenities. The safety boats would be occupied by up to 6 individuals and the educational boats by up to 10 persons."*

2.4 Concluding that:

> *"The planning assessment must be carried out as per the requirements of that Section and it is considered that on balance planning permission should be granted subject to the proposed amended use condition, notwithstanding the objections received, as such a change would not give rise to material harm to residential amenity"*

2.5 As highlighted above by the Officer, the application refers to a Section 73 amendment to a condition which must be assessed on its own merits rather than that of the original proposed development. It is considered that in reaching a decision on this application, views surrounding residential amenity, including the proximity of nearby properties, were made based on the original proposals rather than how the change in condition may result in a greater impact than that which has already been granted consent.

2.6 The notable difference in how educational or safety vessels will lead to unacceptable impact on residential amenity has not been addressed and no evidence has been produced to demonstrate how these types of vessels would lead to an increase in number of trips or greater noise levels than the current allowed proposals. It is further reinforced in the Officer's report that the boating activities would be undertaken in the working day and in a controlled and supervised manner which would not lead to an unacceptable level of noise or disruption to nearby residents.

2.7 In addition, as highlighted in our Statement of Case and our Final Comments, the limited number of berths available at the marina mean that the inclusion of safety or education vessels will not be in addition to the leisure vessels, it will be instead of as a berthing will be required which will take a leisure vessel out of use. This is further poignant as the safety and educational vessels would have a cap on the number of occupants on board (as governed by the Marine Coding Authority), whereas the leisure vessels (currently allowed by planning permission) do not. Therefore, in allowing said vessels to be included it is more likely to reduce the number of people using the marina, resulting in no additional impact on existing levels of residential amenity.

2.8 The views of the LPA have therefore disregarded the Senior Planning Officer, and the evidence put before them, detailed above, in terms of the travel movements of the different types of vessels and their passenger numbers.

2.9 Furthermore, the Council's Statement refers to the Planning Inspector's decision to dismiss an appeal that previously sought to remove the aforementioned condition (ref: APP/A4520/W/21/328918) and conclude that as that appeal was dismissed then this appeal should also be dismissed. However, an important distinction lies in the difference between the two appeals, namely that the original appeal sought to remove the condition entirely, thereby allowing for any form of vessel to be moored, whereas the application subject to this appeal simply seeks to allow safety vessels or vessels engaged in educational use to use the dock. Within the original appeal the Inspector found that the increased level of disruption and disturbance for local residents would come from:

> *"The comings and goings associated with groups of people and those arriving for commercially-based activities combined with restricted parking and dropping off-arrangements close by."*

2.10 Consequently, it is envisaged that the reasons for dismissal in the case of the appeal would not be applicable for this proposed amendment to the condition, as the proposed activities relate only to those for use as educational or safety vessels. In addition, as highlighted in our final comments and at summarised at paragraph 2.7 of this application, the inclusion of these types of vessels may also help to alleviate any perceived parking challenges. Subsequently, the two appeals can therefore not be considered as congeneric and once again this application must be assessed on its own merits.

2.11 For the above reasons, and those set out in our Statement of Case and our Final Comments it is considered that the LPA are incorrect in their assertions that the proposals would result in harm to residential amenity relative to what is already permitted. The proposals would clearly not result in an unacceptable level of residential amenity harm and would consequently comply with local and national policies.

Decision to Defer:

2.12 At paragraph 1.4 of the LPA's Statement of Case, the LPA have set out that the *"Planning Committee resolved to defer its determination of the application, until a final determination on the Long Row Definitive Map Modification Order"*. The consequence of opting to defer a decision on the application created an unnecessary delay to the outcome of this application and was made on a premise which had no relevance to the application in question.

2.13 The decision to do so was also not only against officer recommendation that committee should approve the application subject to conditions but was also actively advised against by the Senior Planning Officer present at committee. This was in addition to the Council's Solicitor who was also present at said committee meeting and who reminded members that the outcome of the s73 planning application was not considered to affect consideration of the DMMO application and that the application should be considered on its own merits which refer to the amendment to the condition which would allow for the use of educational and safety trips, and that there was no planning policy basis for this.

2.14 It is therefore clear that the decision for deferral was made solely on the basis of the outcome of the DMMO application, which has no bearing on the application at hand.

2.15 Not only was the decision to defer made on the premise of ensuring that the DMMO application was resolved, but since this appeal has been submitted, the matter of the DMMO has since been brought back to committee and has subsequently rejected as no evidence of unrecorded right of way could be found and yet the Planning Committee still resolved that they would have refused planning permission for this application had they not deferred. This decision highlights the preposterousness of the decision for Planning Committee to defer based on the matter of the DMMO not being resolved, to then opt to refuse the proposals in any case once the DMMO matter was then concluded. As the LPA have provided no further comments on this, we would reiterate the comments set out in the Appellant's Statement of Case that the decision to defer the application on this matter is completely unjustified and ill-founded.

2.16 For the reasons set out above, and those set out in our Statement of Case, the appellant remains of the opinion that the LPA have caused unnecessary delay as a result of the deferral and have consequently resulted in a decision not being reached on a proposal which does not conflict with local or national policy and has further been endorsed by South Shields Marine School, Port of Tyne, Groundwork North East and Tyne Coast College. In addition, to ensuring that a safety vessel is present, thereby ensuring the well-being of individuals engaged in activities near or over dock edges or other potentially hazardous locations, in order to efficiently and safely rescue anyone who may fall into the water.

2.17 It is therefore considered that the decision to defer and ultimately the reasoning from the Planning Committee to defend the appeal has been based on vague and generalised assertions about the proposal's impact on residential amenity which is unsupported by the Planning Officer. Furthermore, no evidence has been produced that the inclusion of safety and educational boats would have any greater impact on residential amenity than the mooring of recreational leisure boats which is already permitted. Rather, owing to the limited number of berths available at the site, by permitting safety and educational vessels less leisure vessels will be able to moor, thereby reducing the number of users at the site.

2.18 The LPA have consequently failed to reach a decision on the proposals which has ultimately led to the prevention and delay of a development that should have been approved having regard to its accordance with the development plan, national policy and any other material considerations. This amounts to unreasonable behaviour having regard to NPPG.

3.0 Conclusion

3.1 This Costs Application relates to the failure of South Tyneside Council to make a decision in the agreed timescales for the variation to the wording of condition 6 of previously approved planning application ST/0353/20/FUL - to allow for the mooring of safety vessel(s) or those engaged in educational use, in addition to the mooring of recreational leisure boats already permitted (LPA Ref. ST/0838/23/VC).

3.2 Following this non-determination, the appellant submitted an appeal to the Planning Inspectorate, Planning Committee were then required to state what their decision would have been had one been reached, in which they confirmed they would have been resolved to refuse the application on grounds of residential amenity.

3.3 No information has been provided on how the inclusion of the mooring of safety and educational boats would have any greater impact on residential amenity than the mooring of recreational leisure boats which is already permitted, moreover, this view goes against the Senior Planning Officer who concluded that the proposals would not *create unacceptable levels of noise and disruption to residential amenities*.

3.4 This has ultimately led to the prevention and delay of a development that should have been approved, having regard to its accordance with the development plan, national policy and any other material considerations. Including creating a number of benefits as demonstrated by the letters of endorsement from South Shields Marine School, Port of Tyne, Groundwork North East and Tyne Coast College.

3.5 It is wholly evident for the reasons set out in this costs application that the LPA have acted unreasonably in failing to reach a decision on the proposals, despite the recommendations of the Senior Planning Officer that they be approved subject to conditions, putting the appellant to unnecessary expense and we would therefore respectfully request that the appointed Inspector grants an award of costs to the appellant.