South Tyneside Council

LPA response to an application for costs

Planning Inspectorate Ref.	APP/A4520/W/24/3349402
South Tyneside Council Ref.	ST/0838/23/VC
Appeal by:	Mr Mark Turnbull
Site address:	Former Brigham and Cowan Dock 4 Entrance Long Row South Sheilds NE33 1JA

1.0 Scope

1.1. In any application for costs, the party seeking the award must demonstrate that:

1.1.1. The other party has behaved unreasonably; and

1.1.2. The unreasonable behaviour has directly caused the other party to incur unnecessary or wasted expense in the appeal process.
(See PPG Paragraph: 030 Reference ID: 16-030-20140306)

1.2. 'Unreasonable' bears its ordinary meaning. See *Manchester City Council v SSE & Mercury Communications Limited*[1], where the Court stated that *'…in order to decide whether a party had acted unreasonably…it would* ***nearly always be necessary to have regard to the picture as a whole****.'* Unreasonable behaviour may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

(See PPG Paragraph: 031 Reference ID: 16-031-20140306)

1.3. Guidance on Appeals and the Award of Costs indicates circumstances in which LPAs handling of a planning application prior to the appeal may lead to a costs award. (See PPG Paragraph: 048 Reference ID: 16-048-20140306)

1.4 The Local Planning Authority [LPA] has been served with a costs' application for the planning application appeal (for and on behalf of the appellant), and where a full award for those appeal costs is being sought.

1.5 The question for the Inspector in dealing with this appeal costs application is, whether in principle, costs should be awarded and on what basis, not the [actual monetary] amount.

2.0 Councils' Response to Costs Application

2.1 In this instance, the LPA accept that Planning Committee's reason for deferring its consideration / determination of ST/0838/23/VC was contrary to officer advice, as was evidenced by the minutes previously supplied by the LPA and to which the Appellant's application for an award of costs specifically refers. However, and as those minutes also expressly include, it was very clear that Planning Committee had raised potential concerns in relation to the acceptability of the residential amenity impacts of the application.

[1] [1998] JPL 774

2.2 Additionally, following submission of the appeal against non-determination, the LPA sought a view from the Planning Committee as to how it may have determined ST/0838/23/VC, if it were able to; and as was set out in the LPA's Appeal Statement it again re-iterated concerns regarding residential amenity impacts and advised that they would have refused planning permission on such grounds.

2.3 The LPA would take the view here that, while the points set out in the application for costs in relation to residential amenity are noted, the view that the Planning Committee took on upon that issue (amongst other things) at its meeting of 28 August 2024 (or where it had previously raised concerns in that regard at the meeting of 17 June 2024), was not a wholly unreasonable one to take having regard to their view to the picture as a whole; and where it would certainly not be unreasonable in the context of an application for an award of costs.

2.4 In this regard Planning Committee considered that there was greater potential for larger numbers of individuals and therefore increased disturbance to nearby residents to arise if educational and safety boats were allowed to use the floating pontoon as well as recreational leisure boats. One of the conditions suggested by officers in their approval recommendation had referenced that each of the 4 safety/educational boats could have accommodated up to 10 individuals (i.e. up to 40 persons in total).

2.5 Planning Committee were also conscious of the previous appeal decision in December 2021 (APP/A4520/W/21/3282918) which had dismissed a proposal to remove the condition attached to the original planning permission for the pontoon which limited its use solely for the mooring of recreational leisure boats. This appeal decision was included in the Planning Committee agenda papers when they considered the Section 73 application the subject of this present appeal.

2.6 Paragraph 12 of the Inspectors decision in that appeal states that in the context of a peaceful residential setting such as this, 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, would be likely to lead to an increased level of disruption and disturbance for local residents.

2.7 Whilst that appeal sought removal of the condition altogether that sought to restrict what types of boat could use the pontoon rather than seeking a variation

of the condition to allow both safety and educational boats in addition to recreational vessels to use the pontoon, Planning Committee were concerned that even just allowing the addition of safety and educational boats to the list of approved boats would still result in potential for increased activity that would be harmful to residential amenity over and above the currently consented position.

2.8 An award of costs is also sought in relation to the decision of Planning Committee to defer a decision on the planning application pending a decision on a related Definitive Map Modification Order (DMMO) application which concerned land that included the dockside adjacent to the floating pontoon.

2.9 The Planning Committee's reasons for such a deferral again relate back to their concerns surrounding residential amenity impacts, as the decision on the DMMO application would have had a bearing on the level of activity on the dockside adjacent to the floating pontoon. If that DMMO application had been granted, then adding the dockside to the definitive map could have potentially resulted in members of the public having access to the dockside and therefore concerns around increased activity associated with safety and educational vessels using the pontoon would have been less acute. In the event, that DMMO application has now been refused by Planning Committee, and therefore, the view of Planning Committee that they would have refused the appeal application on residential amenity grounds, reflects the consequences of their decision on the DMMO application. In this regard, the dockside remains a private area to which the public do not have unrestricted access and therefore remains the peaceful residential setting referenced by the previous appeal Inspector and Planning Committee considered that allowing this current proposal regarding the addition of safety and educational vessels would be harmful to residential amenity bearing in mind this current context.

2.10 Overall, the Inspector will need to take their own view on residential amenity (amongst other things) in their determination of the appeal (and where that appeal relates to an application that is made under section 73 of the Town and Country Planning Act 1990).

2.11 However, given all of the above it is submitted that an award of costs is not justified in this instance.