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## Costs Decision

Hearing Held on 25 June 2019

Site visit made on 25 June 2019

**by Mike Worden BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 July 2019**

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### **Costs application in relation to Appeal Ref: APP/J2373/W/18/3216731 Festival Leisure Park, Rigby Road, Blackpool FY1 5EP**

- 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 Valed European Diversified Fund (Jersey) 14 Limited for full award of costs against Blackpool Borough Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the demolition of the existing public house, erection of bingo hall (use class D2), drive-through restaurant/café (use class A3/A5), relocation of vehicular access, amendments to parking layout, servicing and associated works.
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### **Decision**

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

### **The submissions for Valed European Diversified Fund (Jersey) 14 Limited**

2. The costs application was submitted in writing.

### **The response by Blackpool Borough Council**

3. The response was made in writing.

### **Reasons**

4. 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.
5. The appellant considers that the Council acted unreasonably in that the application was placed on to the Committee report with a recommendation for approval but an update report from the Council's Head of Highways and Traffic published a day before the meeting expressed concerns about the reduction in car parking spaces. It is claimed that these concerns led the Committee to refuse the application. In addition the appellant considers that technical evidence relating to noise was ignored and the reasons for refusal are not substantiated. The applicant claims that as a result, it has been subject to unnecessary wasted expense.
6. The production of an update report prior to Committee is a common approach at the Council. It is not entirely clear why and how the advice from the highways department had changed from being supportive of the scheme to one of concern, but the earlier doubts about the scheme expressed by the highways

department at the consultation stage were set out on the Committee report itself. The appellant argues that the Council's highway officers had given its support in an email on 5 June 2018, prior to the Committee meeting.

7. The update note to Committee made reference to a potential scenario of a blockbuster release at the same time as a bingo session and the impact this could have on highway safety and nuisance to residents from on street parking. The Head of Highways and Traffic advised that a £10,000 financial contribution should be requested in order to be held in case parking issues arise within 3 years as the local highway authority would not have the resources to address them. However, the note clearly concludes that parking provision would be sufficient to serve the proposed development and that a financial contribution could not be justified. The recommendation to grant permission was not altered.
8. I do not know how much a part the update note played in the decision of the Committee to refuse planning permission, although the Council's cost rebuttal indicates it was taken into account, along with residents concerns, by members. Committee members make their own decisions after considering the advice of officers and other evidence.
9. Although I found that the appeal should be allowed and that there would be no harm to highway safety or living conditions of residents as a result of the proposal, the Council, in defending the appeal, presented substantial evidence from an independent highways consultant working on its behalf. This evidence sought to defend the Council's reasons for refusal relating to highway matters. I therefore do not consider that the Council acted unreasonably in this regard.
10. The Council did not present any technical evidence in relation to noise and did not dispute the appellant's noise assessment. This was made clear in its statement of case. However it did set out in its statement of case that it was concerned about noise and disturbance from users of the site particularly in the evening and the potential impact this would have on the living conditions of neighbouring dwellings. I consider that the basis for its stance was not unreasonable given the proximity of dwellings to the appeal site. The Council also presented evidence at the hearing from a Councillor who was able to articulate the Council's position on noise and disturbance. Although in my decision I found that there would not be harm as a result of noise and disturbance, I do not consider that the Council acted unreasonably in this regard.
11. I have had regard to the views of both parties on how the acceptance of the appellant's suggested revised plan showing the drive through removed would have on the costs application. Since I have found that the proposal as considered by the Council is acceptable, I do not need to consider those points further.
12. For the reasons set out above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated, and therefore the application for a full award of costs if refused.

*Mike Worden*

INSPECTOR