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## Costs Decision

Site visit made on 18 January 2022

**by G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 February 2022

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**Costs application in relation to Appeal Ref: APP/H4505/W/21/3284738  
Lands At & To The Rear: 21 & 23 Monkridge Gardens with disused pavilion  
and hardstanding, off Monkridge Gardens, Dunston Hill, Gateshead NE11  
9XE**

- 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 Dr Anton Lang for a full award of costs against Gateshead Council.
  - The appeal was against the grant subject to conditions of planning permission for proposed deletion of Conditions 5 and 6 (to remove footpath provision); and proposed variation of Condition 1 (approved plan suite); and Conditions 3 & 4 (materials); and Condition 9 (cycle storage); and Conditions 16 & 17 (bird & bat boxes) of extant application GMBC Ref: DC/20/01183/FUL approved: 9 April 2021 for "full planning permission for the erection of 9 dwellinghouses with front and back gardens and driveway parking; new shared-surface, vehicular and pedestrian access between Numbers 21 & 23 (both retained), visitor parking area and landscaped areas (as amended 08/03/21)." (Amended 25/08/21).
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### Decision

1. The application is refused.

### Reasons

2. Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and in so doing caused the party applying for costs to incur unnecessary expense in the appeal process. The Guidance also indicates that local planning authorities will be at risk of an award being made against them if they rely upon vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis or where conditions are imposed that fail the 'six tests' of conditions.
3. Whilst I do not agree with the Council's reasoning and conclusions in respect of conditions 18 and 19, I do not consider that the Council's actions were unreasonable. Although the findings of the appellant's Noise Assessment (NA)<sup>1</sup> were not the subject of dispute between the parties, its scope was limited to noise and vibration arising from vehicles.
4. Given the relationship between 21 and 23 Monkridge Gardens and the access road to the appeal site, I do not consider it was unreasonable of the Council to seek to protect living conditions by the imposition of conditions 18 and 19. Nor should the Council be criticised in exercising their judgement on this matter. The appellant cites the NA to support the argument that the Council relied upon

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<sup>1</sup> Northburn Acoustics 'Noise Assessment' prepared for Cokain Developments Ltd Report number: 20-51-793

vague, generalised and subjective opinion rather than the evidence presented by the NA. However, I am persuaded by the Council's counterargument that this amounts to nothing more than a difference of professional judgement.

5. I am satisfied that the Council's Statement of Case sets out the justification for the approach that was taken and the reasoning behind it. Whilst I do not agree with the Council in this respect, as set out in my decision on the planning matters thus concluding that the condition was not necessary, I am not persuaded that that is sufficient to amount to unreasonable behaviour.
6. With regard to condition 20, I am satisfied that the Council adequately demonstrated the justification for the imposition of this condition, mindful of the advice and guidance set out in the Framework and the Guidance about the restriction of permitted development rights. As I have set out elsewhere, I consider this condition to be reasonable and necessary in order to safeguard living conditions of existing and future occupants of land and buildings. The Council did not act unreasonably in relation to their approach to condition 20.

### **Conclusion**

7. For the reasons I have set out, the Council did not act unreasonably in reaching their decision in respect of the appeal proposal. As such, it cannot be the case that the appellant has incurred unnecessary expense and the application for an award of costs therefore fails.

*G Robbie*

INSPECTOR