

**Decision maker:** Planning Committee - 17 August 2016

**Subject:** Planning appeal decision relating to 1 North End Avenue

**Report by:** Assistant Director of Culture & City Development

**Ward affected:** Nelson

**Key decision (over £250k):** No

---

### 1. Purpose of report

To advise the Committee of the outcome of the appeal, which was allowed and that a claim for an award of costs made by the appellant was also allowed.

### 2. Recommendation

That the Inspectors Report and findings against the Council leading to the award of costs be received and noted.

### 3. Comments

The planning application to which this appeal related sought permission for a change of use from builders' store to MOT station and repair garage and installation of replacement roof covering and re-cladding to part of front elevation. The application was refused by the Planning Committee at its meeting on 12<sup>th</sup> August 2015 against the officers recommendation with the reason for refusal relating to likely increased noise and disturbance being detrimental to the residential amenities of the occupiers of neighbouring properties.

The Inspector noted that "the appeal building is situated in a residential street and would introduce a new commercial use involved in the MOT testing of vehicles and in associated repairs" and accepted that "the nature of such a use would give rise to noise generating activities such as in the lifting of vehicle ramps, the running of engines, and testing of horns" and that "any repairs that may be required could generate further noise as a result of mechanical processes such as the removal of wheel nuts with air guns and the striking of hammers".

The Inspector noted that an acoustic testing report had been submitted with the application which had "been accepted, without qualification, by the Council's Environmental Health section noting that the predicted noise levels would fall below the World Health Organisation recommended level for impact upon gardens (55dB(A)) and, with the operating hours proposed, would give no rise to sleep deprivation". The Inspector opined that "in the absence of any technical evidence to the contrary I am satisfied that the Report provides sufficient information to establish that noise from the proposal could be mitigated or minimised, as an adverse impact, to a degree sufficient

to comply with the aims of ... paragraph 123 of the National Planning Policy Framework".

The Inspector took the view that "with the proposed attenuation measures in place, as can be secured by condition, I find no substantive reason for dismissing the appeal, especially as the proposal would deliver benefits in the form of employment and environmental enhancements for the area". The Inspector was "mindful that a similar operation has been carried out over a fifteen year period by the appellant in a building at a neighbouring street without giving rise to complaints from residents".

The Inspector found that "the proposal would avoid significant adverse impacts on health and quality of life and, as a consequence, would avoid a harmful effect on the living conditions of the occupants of nearby residential properties" and concluded "that the proposal would accord with the requirements of Policy PCS23 of The Portsmouth Plan (Portsmouth's Core Strategy) adopted January 2012 that seeks the protection of amenity and the provision of a good standard of living environment for occupants of neighbouring buildings".

The National Planning Practice Guidance makes it clear that a Local Planning Authority is at a risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

The appellant claimed that the members of the Planning Committee of the Council acted unreasonably in going against the advice of its professional officers without good reason and failing to substantiate the reason for refusal. The Inspector noted that "while the members of the Planning Committee are not bound by the advice of their professional officers they are required to exercise their duty to determine planning applications in a reasonable manner. This includes taking into account only material planning considerations".

The Inspector noted that "in the light of the substantive evidence contained within the acoustic report provided by the applicant, as accepted by professional officers, it is beholden on the members to demonstrate that other material matters exist to justify an alternative assessment. Local opposition to a proposal is not in itself a valid ground for refusing planning permission unless it is founded upon valid material planning reasons".

The Inspector commented that no evidence had been produced to challenge the appellant's evidence and justify taking an alternative view and suggested that "the lack of a site visit by the members of the Planning Committee to appraise itself of the existing site conditions is indicative of its failure to exercise its duty in this regard in a reasonable manner".

The Inspector concluded that "such behaviour as I find to be unreasonable has resulted in the submission of the appeal leading to unnecessary expense for the appellant" and found "that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified".

**4. Reasons for recommendations**

For information to the Planning Committee

**5. Equality impact assessment (EIA)**

None.

**6. Legal Services' comments**

The report is for information only.

**7. Finance's comments**

The report is for information only.

.....  
Signed by:

**Appendices:**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

<b>Title of document</b>	<b>Location</b>
Planning application file 15/00895/FUL	Planning Services
Inspector's decision APP/Z1775/W/15/3138030	Planning Services