
Costs Decision

Site visit made on 28 February 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 6 April 2017

Costs application in relation to Appeal Ref: APP/V2825/W/16/3165006 43 Oulton Rise, Northampton, Northamptonshire NN3 6EW

- 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 M John Carter, Hawksvalley Properties Ltd for a full award of costs against Northampton Borough Council.
 - The appeal was against the refusal of planning permission for 'Change of use from shop to hot food takeaway and fix flue above rear of no. 43 to rear flank wall of no. 45'.
-

Decision

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

Reasons

2. The national Planning Practice Guidance (PPG) advises that, 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.
3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹.
4. There are two main issues to consider in determining the Appellant's costs application. These are firstly whether the Council's reasons for refusing permission were reasonable and secondly whether, given the sequence of events set out in the costs application, it should have granted an extension of time beyond its 8 week target for determining the application.
5. In relation to the first of these points, my appeal decision finds that the appeal proposal would cause moderate harm the character and appearance of the site and the surrounding area, which is not outweighed by any other factor. It therefore follows that the Council's first reason for refusal, which relates to this issue, is not unreasonable.
6. I have not found in favour of the Council in relation to the second reason for refusal, concerning the effect of the proposed extraction flue on levels of odour which would be experienced by occupiers of nearby flats. However, I have also

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

found that, even with equipment maintained to its intended specification, it is possible that there could be occasions when odours would be experienced within the adjacent flats and their gardens. It is a matter of judgement as to whether this risk would be materially harmful, particularly given the proximity of the proposed flue to these neighbouring dwellings. I do not as a result find the Council's second reason for refusal to be unreasonable.

7. I agree that the amendments to the planning application referred to in the costs application, comprising the addition of a terminal reducer and setting of a fixed height for the flue would have been unlikely to require further consultation on the application before a decision could be made. However, as these amendments did not remove the basis for the Council's reasons for refusal, which I have found to be reasonable, there would have been little to gain in delaying the determination of the application as suggested in the costs application.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Jonathan Clarke

INSPECTOR