



Costs Decision

Site visit made on 16 May 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 11 July 2017

Costs application in relation to Appeal Ref: APP/M4510/W/17/3168748 405 Stamfordham Road, Westerhope, Newcastle-upon-Tyne NE5 5HA

- 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 Mr Anthony Lang for a full award of costs against Newcastle City Council.
 - The appeal was against the grant subject to conditions of planning permission for change of use of existing ground floor shop (Use Class A1) to proposed café/restaurant (Use Class A3).
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Decision

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

Reasons

2. Paragraph 030 of the National Planning Policy Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The appellant states that the appeal was unnecessary. The imposition of the disputed conditions by the Council relating to the planning permission Ref: 2016/1891/01/DET was unnecessary and unreasonable given the similar nature of the appeal proposal to that of the previously approved scheme at the property that is the subject of this appeal. The appellant argues that this should have carried significant weight. Furthermore, such conditions were not considered necessary and were therefore not imposed in relation to the recent previous approval.
5. It is argued that the Council acted unreasonably in that the proposed scheme was found to be acceptable as per the previous and extant planning permission granted on appeal with fewer conditions imposed. Furthermore, the appellant states that the Council was aware of the recently upheld appeal decision and therefore should not have sought to impose additional and unnecessary conditions on a similar scheme for the same use. In addition, the appellant argues that the Council has neither demonstrated nor proven that any harm would occur on the site, to neighbours or the locality by virtue of the additional conditions not being applied.

- Nor has the Council explained why the conditions were considered necessary in light of the fewer conditions attached to the previously upheld appeal decision.
6. The previously allowed scheme involved 48 covers at the premises whilst the proposal relating to this appeal sought 68 covers. Therefore, the nature of the proposal has materially changed. In my view, it is necessary and reasonable for the Council to address the impact of this material change by the imposition of conditions where necessary and reasonable to make the proposal acceptable in planning terms. Furthermore, the appeal proposal must be determined on its own merits. As a result, I find it reasonable and correct that whilst the previously approved and proposed schemes may be similar, their differences and therefore the potential impacts on the premises, neighbouring occupiers and the surrounding area should be properly considered and addressed where appropriate.
 7. It is evident that the Council has had regard to the previously allowed Appeal at the property as it was referred to in the Officer's Report. Given the material difference between the two proposals, I find that the Council has been reasonable in assessing the appeal proposal and has justified and explained the reasons for the imposition of the disputed conditions in order to address the potential impacts of the proposal. Furthermore, I am satisfied that the disputed conditions imposed in relation to the appeal proposal are necessary, reasonable and meet the six tests set out in the National Planning Policy Framework.
 8. Condition 12 relating to refuse bin storage has been acknowledged by the Council as an error. Notwithstanding this, I find that this does not constitute unreasonable behaviour in this case. The imposition of an amended condition, as suggested by the Council, is necessary, reasonable and pragmatic and in my view does not place the appellant at any significant disadvantage.
 9. The appellant argues that the Council has not demonstrated or proven any tangible harm would occur were the disputed conditions not imposed. It is not for the Council to demonstrate harm. Rather it is for the appellant to demonstrate the means by which any harm would be acceptably dealt with. The Council must assess the proposal on the basis of the information it has at that time. From what I have seen and read, the disputed conditions are focused on ensuring that the proposal would be acceptable in planning terms, based on the information either provided or not provided by the appellant. In my view, this is an entirely reasonable approach for the Council to take.
 10. The approved and proposed developments are similar but have a significant difference with regard to the level of patronage. This material change would have some impact on the operation of the premises, its neighbouring occupiers and the surrounding area. Accordingly, I find that the Council has correctly and properly assessed the proposal and considered the merits of this particular case. In doing so, it has identified reasonable and justified concerns about the impact of the proposal which warrant the imposition of the disputed conditions and which have been clearly and reasonably explained.
 11. As a result, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated by the Council.

Andrew McCormack

INSPECTOR