The Planning Inspectorate

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 Newcastle City Council for a full award of costs against Mr Anthony Lang.
- 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).

Decision

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

Reasons

2. Paragraph 030 of the National Planning Practice 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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. Paragraph 052 of the Guidance sets out examples of unreasonable behaviour by appellants. However, the Council argues that the appellant acted unreasonably by appealing controlling conditions which are based on the information provided by the appellant. Therefore, the Council has requested that an award of costs be made against the appellant for unreasonable behaviour and unnecessary costs.

4. The appellant has stated that the appeal is not against the information provided to the Council but rather the Council's imposition of the additional and disputed conditions in the context of the recently upheld appeal decision for a similar proposal at the site where only six conditions were imposed. The Council has strongly refuted the grounds of the appellant's costs application and stated that it has exercised its development management responsibilities reasonably and properly and determined the proposal in a reasonable manner.

5. The Council's costs application relates to the appellant's appeal against the disputed conditions which are based on the appellant's own information. Notwithstanding this, given the circumstances of this case, I find that the appellant had reasonable and justified cause to appeal against the disputed conditions, having had regard to the fewer conditions attached to the previous upheld decision for a similar proposal.

6. As I found in my decision, although the two proposals are similar, they are materially different with regard to the number of covers at the proposed café/restaurant. This material difference would potentially have an adverse impact on the appeal property, neighbouring occupiers and highway safety. Therefore, this material change gave the Council reasonable justification to impose the disputed conditions.

7. From the evidence before me, just as I have found that the Council was justified in its approach to imposing the disputed conditions based on the information provided by the appellant, the appellant was also justified in making an appeal on the grounds submitted and in the context of the previous decision at the appeal site.

8. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated by the appellant. Therefore the application for an award of costs is refused.

Andrew McCormack

INSPECTOR