
Costs Decision

Site visit made on 31 October 2017

by Katie McDonald MSc MRTPI

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

Decision date: 6 December 2017

Costs application in relation to Appeal Ref: APP/Q4245/W/17/3179252 42-44 Brook Road, Flixton, Manchester M41 5RY

- 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 and Mrs Ellis for a full award of costs against Trafford Borough Council.
 - The appeal was against the grant subject to conditions of planning permission for use of premises as a mixed cafe (A3 Use Class) and function room use with an ancillary children's play area in the rear outbuilding. External alterations to include a flue to the rear, replacement windows to the front and an extension to the rear outbuilding.
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Decision

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

Reasons

2. Planning Practice Guidance indicates 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.¹
3. The applicants submit that the Council have acted unreasonably on substantive grounds by imposing conditions that are not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus do not comply with the guidance in the National Planning Policy Framework (the Framework) on planning conditions and obligations.
4. Condition 11 requires that there would be no public access to the 'shaded area of the rear yard' along with the erection of a fence to restrict access. Condition 12 requires that a scheme to prevent access to the rear yard from the central passageway was submitted to the Council.
5. Essentially, condition 12 duplicates the requirements of condition 11. The Council accept this, and duly removed the condition following the submission of the 'Section 73' application². The Council also accepted a variation to condition 11 to allow access to the ancillary children's play area from the main building.

¹ PPG Reference ID: 16-028-20140306

² Application Ref: 91186/VAR/17 (Granted planning permission 13 July 2017)

6. I accept the condition 12 was unnecessary and therefore did not comply with the guidance in the Framework. I also accept that condition 11 was unduly restrictive and therefore unreasonable.
7. However, the intention behind these conditions was to protect neighbouring living conditions. The outcome of the 'Section 73' application resolved the unreasonable and unnecessary nature of conditions 11 and 12.
8. The submission of the appeal before me seeks to amend the opening hours and use the external courtyard for customers which is different to the 'Section 73' application; and irrespective of my decision on the appeal, the Council adequately defended their decision and the reasoning behind such conditions.
9. Therefore, I do not find that the applicants have been subjected to 'double expenses' by submitting the 'Section 73' application and this appeal.
10. Consequently, for the reasons set out above, and having regard to all other matters raised, I find that the Council have not behaved unreasonably, leading to the applicants incurring unnecessary or wasted expense in the appeal process.
11. The application for an award of costs is not justified.

Katie McDonald

INSPECTOR