



Costs Decision

Site visit made on 17 June 2019

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 16 July 2019

Costs application in relation to Appeal Ref: APP/M4510/W/19/3223573 Former Potraviny Shop - ground floor unit only, 75 Shields Road, Byker, Newcastle Upon Tyne NE6 1DL

- 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 from Shop (Use Class A1) to café / restaurant (Use Class A3) with ancillary takeaway; and new extraction flue to rear elevation, rising to termination point with a high velocity cowl, above eaves level (below ridge): RESUBMISSION OF APPROVED SCHEME 2018/1552/01/DET, BUT REQUESTING DESCRIPTION OF DEVELOPMENT AS APPLICATION FORMS AND LONGER OPENING HOURS.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal the Planning Practice Guidance (the Guidance) states that an award of costs may be made where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can be procedural or it can relate to the substance of the matters under consideration as part of the appeal.
3. Paragraph 051 of the Guidance advises that awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal. Paragraph 053 states that the right of appeal should be exercised in a reasonable manner.
4. The Council are concerned that the appellant is attempting to use the appeal system to expand an extant permission to include an additional element, described as ancillary, to that use. The degree to which an ancillary use is indeed ancillary is a matter of fact and degree and is not before me in an appeal in the context of section 78 of the Town and Country Planning Act 1990 (as amended). As I have set out in my decision, it is open for the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.
5. I do not consider the appellant to have acted unreasonably in submitting an appeal against the grant of planning permission subject to conditions. Despite the dispute between the parties regarding the content and wording of the

development description, the Council indicated with the additional operating hours granted by the second planning permission that the balance between operating hours and living conditions at the appeal premises could be revised to reflect the nature of Shields Road.

6. In that context, and noting the appellant's submissions regarding the 24-hour opening hours of a large multi-national operation nearby and a desire to retain flexibility of use and operation of the unit, I can understand the basis for the appellant wishing to seek to extend the appeal unit's operating hours. However, whilst I have found against the appellant in my decision, I do not consider that the making of the appeal amounts to unreasonable behaviour by the appellant. It follows that, in the absence of unreasonable behaviour, there cannot have been unnecessary costs incurred.

Conclusion

7. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process, as described in the Guidance, has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is therefore not justified.

Graeme Robbie

INSPECTOR