



Costs Decision

Site visit made on 9 June 2020

by S Hunt BA (Hons) MA MRTPI

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

Decision date: 23 June 2020

Costs application in relation to Appeal Ref: APP/A4520/W/19/3238653 The Boldon Lad, Hedworth Lane, Jarrow NE32 4LQ

- 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 Punch Partnerships (PML) Ltd for a full award of costs against South Tyneside Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for Change of use of a Public House (A4) to a Retail Store (A1), reconfiguration of external car park layout and erection of 2.1 metre high close boarded acoustic fencing along the western, northern and eastern site boundaries tapering down to 600mm high adjacent to the highway.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) on appeals advises that costs may 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. The applicant has put forward three points where they consider that substantive unreasonable behaviour has been demonstrated by the Council. These are in terms of preventing development which clearly should have been permitted, failure to produce evidence to substantiate each reason for refusal, and not determining similar cases in a consistent manner.
4. On the first point, the Council gave a full, clear and policy-based reason for their decision. The Council provided reasonable evidence to demonstrate refusal of the proposed development would be justified on its planning merits. A lack of objection from statutory consultees does not automatically mean that an application should be approved when there are planning policy reasons for refusing it. Issues in relation to highway safety were ultimately agreed by the Council following receipt of amended plans at application stage. This is a separate matter to the substantive reason for refusal which relates to retail policies. It seems to me that the Council acted positively and proactively in narrowing the issues in dispute. The Council did not remove its objections regarding the catchment search area for the sequential test and gave adequate reasons for this. I have no reason to conclude that substantive unreasonable behaviour has been demonstrated on this matter.
5. The second point relates to the failure to produce evidence to substantiate the reason for refusal. The parties have a difference in interpretation of local and

national policy, in particular whether the nearby local neighbourhood shopping centre at Fellgate Avenue is a 'town centre' and whether the towns of Jarrow and Hebburn should be included in the search area. I have found in my appeal decision that Fellgate Avenue is consistent with the definition of a town centre in Annex 2 of the National Planning Policy Framework (the Framework). I also found that a wider search area and the inclusion of Jarrow and Hebburn would be unjustified given the scale and nature of the proposal.

6. Nonetheless, the Council's evidence was clearly based on the relevant retail policies of the development plan. Whilst I have found that they are not fully consistent with section 7 of the Framework, this does not constitute unreasonable behaviour.
7. In relation to the third matter, it is evident that the 'Red Duster' application has both similarities and differences with the appeal proposal. The Council adequately reasoned this in paragraphs 2.9-2.10 of their 'Response to Appellant's Statement'. A single application for a similar development on a different site some 3 years ago does not sufficiently justify significant inconsistencies in the determination of such proposals in the Borough. As such, unreasonable behaviour has not been demonstrated in terms of inconsistency.
8. Finally, the refusal of the Council to register and determine a revised planning application concurrent to this appeal is not a matter before me for determination.
9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

S Hunt

Inspector