
Costs Decision

Site visit made on 17 November 2020

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 318th December 2020

Costs application in relation to Appeal Ref: APP/M4510/W/20/3257005 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-upon-Tyne City Council for a full award of costs against Mr Anthony Lang.
 - The appeal was against the refusal of planning permission for change of use of existing ground floor area (currently Use Class A1) to proposed café/restaurant (Use Class A3) with the installation of extraction duct and filtration system to the rear to terminate 1 metre above eaves.
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1. Decision

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

The submission by Newcastle-upon-Tyne City Council

2. The applicant submits that aspects of the proposed development remained unchanged from the previous planning applications and appeal decision¹. They state that the appellant was given opportunity to address the unacceptable components during application stage, but he did not do so. Consequently, the Council state that no effort was made on the appellant's part to overcome the reasons for refusal. Furthermore, the Council also advances that the appellant was fully aware that the application had no reasonable prospect of success. They assert that this has resulted in wasted expense to be incurred through the processing of the subsequent appeal.

The response by Mr Anthony Lang

3. The appellant has maintained that the appeal scheme is 'palpably different' due to the relocation of the proposed flue. He alleges that the Council has displayed a negative attitude towards the proposals for the appeal site. He has advised that the matter of opening hours was left to the decision maker to decide. In respect to the number of patrons the appellant sought for that matter to be considered afresh.
4. Furthermore, the appellant has also drawn attention to the subsequent changes to the Town and Country Planning (Use Classes) Order 1987 and has advanced that this means that a material change of use would no longer occur and the matters relating to opening hours and customers would be unrestricted.

¹ APP/M4510/W/19/3241998

Reasons

5. It is evident that the appeal site has been the subject of a considerable planning history and the appeal proposal does have some similarities with what has come before it.
6. It is also clear that the appellant has gone some way to seeking to resolve some of the Council's objections through an alternative proposal. However, the submitted documents also demonstrate that he was given opportunity to address the Council's ongoing concerns about hours of opening by amending them prior to determination and this was declined. This contradicts the appellant's defence.
7. However, even if I were to rule that the Council's claims of wasted resource were valid, I am mindful that they did not take the opportunity to decline to determine the planning application which is afforded under the provisions of section 70A (1)(b) of the Town and Country Planning Act 1990.
8. Consequently, subsequent to the refusal of that planning application, the appellant was afforded his right to appeal under s78 of the Town and Country Planning Act 1990 and legitimately chose to exercise that right.
9. Moreover, from the evidence before me and my site inspection, I have not found in favour of all of the Council's reasons for refusal and although the appeal is dismissed, the outcome serves to narrow the outstanding disputed matters between main parties.

Conclusion

10. For the reasons given above, I do not find that unreasonable behaviour from the appellant on substantive grounds, as described in the Planning Practice Guidance (PPG) is evident. Consequently, neither has any unnecessary expense in terms of defending this appeal occurred.
11. As the relevant tests set out in the PPG in respect to the determination of costs applications have not been met, I conclude that an award for costs is not justified.

C Dillon

PLANNING INSPECTOR