
Costs Decision

Site visit made on 25 January 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th February 2021

Costs application in relation to Appeal Ref: APP/G2713/W/20/3260622 Romanby Court, High Street, Northallerton DL7 8PG

- 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 Arkgrove Limited for a full award of costs against Hambleton District Council.
 - The appeal was against the refusal of the Council to grant planning permission for the Erection of 3no. kiosks (Use Classes A1/A3).
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Decision

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

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. PPG makes it clear that Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Concern is expressed in relation to both reasons for refusal.

Refusal reason 1

4. The first reason for refusal, relates to the effect of the proposal on the character and appearance of the Northallerton Conservation Area.
5. It is suggested that the Council have failed to produce evidence to substantiate the reason for refusal and have made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
6. However, as can be seen from the decision letter, while I ultimately did not agree with the conclusions of the Council in relation to this matter, the refusal reason is supported by a detailed and logical analysis within the Officer report, drawing on relevant material.
7. The Council identified specific harm to the significance of the Conservation Area and concluded that the less than substantial harm would not be outweighed by public benefits. I cannot therefore agree with the claims of the appellant in relation to the first reason for refusal.

Refusal reason 2

8. Unreasonable behaviour could be exhibited by refusing planning permission on a planning ground capable of being dealt with by a condition. Whilst at the back end of the appeal process agreement between the parties has been reached which would prohibit the preparation and sale of hot food, the correspondence between the parties does not indicate that this was always the case.
9. Whilst I do not have the details of all the communications, correspondence between the parties in the application process suggests that the appellant was still pursuing the provision of some hot food from the kiosks. Suggestions appear to have been made to the Council that the provision of hot food could be managed by conditions which would prevent cooking methods such as shallow or deep frying, restrict food ranges or through the provision of systems of extraction, ventilation or odour abatement.
10. However, odour associated with hot food is unlikely to be solely restricted to these cooking methods and I have substantial doubts as to the enforceability of a condition framed on this basis. I also have doubts about the ability to provide odour mitigation on such structures within the location proposed. While it is suggested that such conditions were based on those discussed with the Councils Environmental Health section, the evidence suggests that those discussions related to an existing building rather than the kiosks proposed, which would likely provide different challenges in terms of odour mitigation in close proximity to residential property.
11. There is no correspondence before me to suggest that at the application stage the appellant would have been accepting of a condition which completely omitted the preparation or sale of any hot food from the kiosks. It was not therefore unreasonable of the Council to include the second reason for refusal.

Conclusion

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

T J Burnham

INSPECTOR