
Costs Decision

Site visit made on 8 February 2022

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th March 2022

Costs application in relation to Appeal Ref: APP/M4510/W/21/3289041 Former Barclays Bank, 5-6 Belmont Cottages, Westerhope, Newcastle upon Tyne NE5 5HP

- 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 Anthony Lang for a full award of costs against Newcastle-upon-Tyne City Council.
 - The appeal was against the refusal of planning permission for change of use from bank (A2 now Class) to café/restaurant (A3 now Class E) and hot food takeaway (sui generis), with installation of new flue/duct systems from two new kitchen canopies to extract upwards above existing two-storey, flat-roofed extension through two high velocity cowls.
-

Decision

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

The submission by Mr Anthony Lang

2. The applicant has advanced that the Council's reason for refusal was based upon unsubstantiated and exaggerated facts provided by the Environmental Health Team late in the determination process. He states that the Officer Report provides little analysis over and above that consultation response or regard to the fallback position. The applicant has also claimed that the Council did not fully assess the technical details provided. Neither does he consider that the Council undertook the necessary planning balance or give appropriate weight to the use of planning conditions.
3. Overall, the applicant considers that this represents unreasonable behaviour on the Council's part for the reasons set out in his appeal submission. He claims that this behaviour led to an unnecessary appeal.

The response by Newcastle upon Tyne City Council

4. The Council considers that the costs application is based on the fact that the appellant disagrees with the final consultation comments of the Environmental Health Team. They maintain that their assessment was not unreasonable given the nature and location of the appeal site relative to residential properties. They also maintain that it is reasonable to seek to protect the living conditions of residents in terms of noise, disturbance and odour. They claim that their determination does not constitute unreasonable behaviour.

Reasons

5. The evidence before me demonstrates that the decision that was reached by the Council is a matter of planning judgement, having had regard to all of the submission documents and consultation responses received. Furthermore, the weight to be afforded to any conflict with the development plan and any other material considerations is a matter for the decision maker.
6. From the evidence that is before me and my site inspection, I have found serious harm to the living conditions of local residents. That harm is of a nature and degree that is not outweighed by other considerations, including the fallback position presented. Therefore, the appeal has been dismissed and the Council's objection supported.
7. No submissions have been made by the applicant that would indicate to me that the Council did not determine the planning application subject to this appeal in accordance with the provisions of the Town and Country Planning Act 1990.

Conclusion

8. For the reasons given above, I do not find that unreasonable behaviour from the Council on substantive grounds, as described in the Planning Practice Guidance (PPG) is evident. Consequently, neither has any unnecessary expense in terms of the preparation and submission of the relevant appeal occurred.
9. 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

INSPECTOR