
Costs Decision

Site visit made on 1 April 2019

by **David Fitzsimon MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 April 2019

Costs application in relation to Appeal Ref: APP/M2325/W/19/3219951 Bank House, 9 Dicconson Terrace, Lytham St Annes FY8 5JY

- 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 Olive Tree Brasserie for a full award of costs against Fylde Council.
 - The appeal was against the refusal of planning permission for the 'installation of a terrace structure, with a glass canopy roof and open sides'.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 Appellant Company asserts that the Council has behaved unreasonably because in defending its position, it referred to a Supplementary Planning Document (titled '*Canopies and Glazed Extensions on Commercial Forecourts – A Design Note*') which was adopted before the application was determined, yet was not referred to within the formal Decision Notice.
4. In my view, the Appellant Company were not disadvantaged by this because there was an opportunity to comment on the content and implications of the SPD at the rebuttal stage of the appeal process, but this was not taken. Further, although a material consideration, the determination of the appeal did not turn on the SPD; rather it supported the development plan policies I found the proposal to be in conflict with.
5. The Appellant Company also considers that the Council's decision to withdraw its second reason for refusing the application, which related to a formally protected lime tree, was unreasonable. However, the Council explained that the decision to withdraw arose from the formal discharge of a condition attached to an earlier planning permission relating to the appeal property which required the protection of this tree (Ref. 18/0164). Whilst I understand that the statutory start date of the application to discharge the condition was 24 August 2018, which is well before the appeal proposal was determined on 7 November 2018, it was not determined until well after this date due to outstanding information being required. On this basis, I am satisfied that the Council had reasonably held concerns about the potential impact of the appeal

proposal on the longevity of the lime tree at the time the appeal application was determined.

6. With regards to the second reason for refusal, the Statement produced on behalf of the Appellant Company to support the appeal effectively repeats the findings of the Arboriculture Report submitted with the planning application which, in my view, involved limited additional work. Further, the Council withdrew this second reason for refusal in its Appeal Statement and I am satisfied that given the situation outlined above, this was the earliest opportunity to do so.
7. In light of the above factors, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

David Fitzsimon

INSPECTOR