
Costs Decisions

Site visit made on 20 January 2015

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 10 March 2015

Appeal A

Costs application in relation to Appeal Ref: APP/H0738/A/14/2229063 Mandale Retail Park, Ross Road, Stockton on Tees, TS18 2LX

- 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 James Harley for a full award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal of planning permission for external alterations to existing retail units, sub-division to create two additional units for food retail use, including one drive through unit, and erection of two new retail units with associated landscaping.
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Appeal B

Costs application in relation to Appeal Ref: APP/H0738/A/14/2229065 Mandale Retail Park, Ross Road, Stockton on Tees, TS18 2LX

- 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 James Harley for a full award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal of planning permission for outline application for the erection of non-food retail units without complying with conditions attached to planning permission Ref 94/2109/P, dated 6 January 1995.
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Appeal C

Costs application in relation to Appeal Ref: APP/H0738/A/14/2229068 Mandale Retail Park, Ross Road, Stockton on Tees, TS18 2LX

- 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 James Harley for a full award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal planning permission for erection of single storey building to create 5 No non-food retail units and associated car parks (Blocks B) without complying with conditions attached to planning permission Ref 95/0179/P, dated 12 April 1995.
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Appeal D

Costs application in relation to Appeal Ref: APP/H0738/A/14/2229070 Mandale Retail Park, Ross Road, Stockton on Tees, TS18 2LX

- 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 James Harley for a full award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal planning permission for erection of single storey building to create 3 No non-food retail units (Block A) and associated car parking without complying with conditions attached to planning permission Ref 95/0180/P, dated 10 March 1995.
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Decisions

1. The application for an award of costs in relation to the Appeals A, B, C and D is dismissed.

Reasons

2. Planning Policy Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. Mandale Retail Park was constructed following outline consent ref 94/2109/P and 2 reserved matters applications Ref 95/0179/P and 95/0180/P. These permissions were subject to conditions restricting subdivision and the sale of food from the premises. An application was originally made in the form of a single application ref 14/1666/FUL for the erection of 2 small units within the existing car park for A1 use, and the subdivision of existing units 1 and 5 within the retail park to provide units to be used for a drive through hot food use and occupation by a sandwich chain.
4. The Council subsequently altered the description of development to "proposed erection of 2 No retail units with associated landscaping and external alterations to existing retail units" and advised that in addition to the original application, 3 additional applications to vary relevant conditions on the previous consents were also required. The Council considered it was not procedural correct to seek permission within a single application as they considered that the subdivision and proposed uses would not otherwise need planning permission, these elements of the scheme only requiring consent by virtue of restrictive conditions.
5. As a result of what was in essence a dispute about registering the original application, the appellant agreed to a revised application description and submitted 3 applications to vary conditions. It is clear from the submission that the appellant considers this requirement to be unnecessary. However, whatever the merits of the approach advocated by the Council, the appellant was not bound to accept the Council's view on the matter. The option was open to the appellant to, after a prescribed period, appeal the original application on the grounds of non-determination. The Inspectorate would then consider both whether the application could be determined and if so, the appeal itself.

6. Therefore, as the appellant was not bound to accept the Council's opinion that the applications were required, and the original application which was the subject of this dispute is not before me, I find that unreasonable behaviour, resulting in unnecessary expense has not been demonstrated.
7. The appellant also considers that in relation to the matter of the unilateral undertaking as a means of "trading off" the existing food retail provision on site the Council failed to determine like applications in a like manner. However, notwithstanding the Council's views in relation to the acceptability of a S106 in this case, I have found that the undertaking provided would not have been an acceptable means of fulfilling such a function in any case and as a result the appellant cannot have been disadvantaged in the matter.
8. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Anne Jordan

INSPECTOR