

Costs Decision

Site visit made on 18 January 2017

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 28th April 2017

Costs application in relation to Appeal Ref: APP/E5900/W/16/3150733 Duke of Wellington, 12 Toynbee Street, London E1 7NE

- 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 Mendoza Limited for a partial award of costs against the Council of the London Borough of Tower Hamlets.
 - The appeal was against the refusal of planning permission for change of use from a public house (Class A4) to public house/hotel (sui generis) (public house being retained at basement & ground level) together with a two storey extension with mansard roof at second floor level and the installation of dormer windows to allow the conversion of the loft space into hotel accommodation.
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Decision

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

Reasons

2. Paragraph 030 of the National Planning Practice Guidance (the NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The NPPG at paragraph 049 states 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. This includes, for example, where vague, generalised or inaccurate assertions about a proposal's impact are made which are unsupported by objective analysis. At paragraph 047 the NPPG states that that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal.
 4. The appellant has applied for costs to be awarded in this case due to both matters of substantive and procedural concern about how the Council has dealt with this application and appeal. I will deal with each of these concerns in turn.
 5. Of the three reasons for refusal given in this case, the appellant considers that the two relating to the viability of the public house and highway matters are largely unsubstantiated, vague and generalised. The officer's report in this case indicated a recommendation to approve this proposal on the basis that the small number of hotel rooms involved would be unlikely to undermine the principle A4 use of the building, and also in such an accessible location it would not cause a significant impact on the capacity of neighbouring streets. Whilst the Council is not duty bound to follow the advice of its professional advisers, if a different decision is reached the Council must clearly demonstrate on planning grounds
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why a proposal is unacceptable and provide evidence to substantiate that reasoning.

6. In this case it is clear that there has been pressure from community and other local interests, and that additional information considered at committee stage has led to a different conclusion. In relation to the viability of the public house, the extent of concern about the impact of these proposals on the character of this much loved drinking establishment is clear, as detailed in my decision on this case. The Council has given significant weight to the fact that operational arrangements for the dual hotel/public house proposal could lead to pressure to alter this character to an unacceptable degree. In seeking to protect this character it was further considered that the application of a condition to require the retention of A4 use at ground floor and basement level would not in itself protect the role of the pub as a valued community facility, beyond that of a generic drinking establishment.
7. Whilst I have come to a different conclusion on this matter, I accept that the Council sought to respond to policy provisions relating to the protection of community infrastructure. In these respects the Council's reason for refusal clearly articulated the nature of their concerns and the conflict with policy.
8. Turning to highway matters, the Council's highways and transportation adviser commented at committee stage that *the applicant has failed to demonstrate how the hotel use will be able to operate efficiently* with regard to access and servicing. Further detail at appeal stage demonstrates that access to this site and parking in this area are both constrained. Accepting that regular servicing of the hotel would be required, the application did not demonstrate that it would comply with policy which seeks to ensure that development would not have any adverse impact on the capacity and safety of the highway network in the vicinity of the appeal site.
9. Whilst my conclusion on this matter was that a development of this size would be unlikely to have a significant impact on the safe operation of the highway network, I accept that in the absence of evidence from the appellant to the contrary, policy provisions and locational constraints allow for a different conclusion to be reached.
10. Turning to procedural matters, the appellant has expressed concern about the Council's handling of procedures around the listing of the Duke of Wellington as an Asset of Community Value. I accept that the timing of this procedure has been frustrating to the appellant, and note the concerns about this process. However, the aspiration for such a listing had been clearly expressed for some time by local supporters and in this sense confirmation of the listing was not a surprise. Whilst the timing of the listing might appear to have been designed to obstruct the interests of the appellant, local authorities are able to pursue such procedures at any time and in this case my view is that it was not unreasonable to do so.
11. 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 an award of costs is not justified.

AJ Mageean

INSPECTOR