

Costs Decision

Hearing held on 25 April 2017

Site visit made on 25 April 2017

by David Cliff BA Hons MSc MRTPI

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

Decision date: 21st June 2017

Costs application in relation to Appeal Ref: APP/X5210/W/17/3167533 Museum House, 23-26 Museum Street, London WC1A 1JT

- 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 Devonshire Development (UK) Limited for a full award of costs against the Council of the London Borough of Camden.
 - The hearing was in connection with an appeal against the refusal of an application for planning permission for change of use of part second and all of the third floor from Class B1 (office) use to Class C3 (residential) use.
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Decision

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

Procedural Matter

2. The application for costs along with the Council's response was originally made in writing. At the Hearing both main parties made additional representations in relation to the costs application.

Reasons

3. Planning Policy Guidance advises that irrespective of the outcome of an 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.
 4. I understand from the Council that the role of the Members Briefing Panel is to decide whether certain applications can be determined under delegated powers or whether they should be considered by the Development Control Committee. In this case, following questions raised by the Panel, the presenting officer decided to withdraw the application from the Members Briefing Agenda and refer it back to the case officer. Whilst there are minutes provided of the meeting, it does not appear that the Panel changed the outcome of the application, but that the discussion at the Panel meeting resulting in the presenting officer having some doubts at the content of the report. Subsequently the case officer revised the report to recommend that the application be refused under delegated powers.
 5. There is no evidence that the Panel asked the officer to change the report and make a differing recommendation. It appears likely to be the case that questions asked by Members lead to issues being considered by the presenting
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officer leading to his/her decision to withdrawn the application from the panel and refer back to the case officer for further consideration. I note that the report presented to the Panel was in draft and so in any case it would not necessarily be the final report. It is also the case, that in determining applications case officers may alter their views during the course of the determination process, particularly on more balanced cases. This does not necessarily mean that the case officer's recommendation is no longer based on their professional opinion.

6. I also note the appellant's concern regarding the availability of the Members Briefing Delegated Report though I do not consider that this amounts to deliberately concealing evidence, particularly as the Council says that the report was only a draft report at that time.
7. Whilst I acknowledge the appellants frustration and concern, it does not therefore appear to me from the information before me that the way in which the Council has determined the application amounts to unreasonable behaviour.
8. The appellant has raised issues regarding the Council's consideration of the application in comparison to other similar applications. All planning applications need to be considered on their merits. Circumstances can change over time leading to the possibility that different conclusions can be reached on similar applications, depending on the materially and significance of the change in circumstances.
9. In this case, the Council has highlighted the continual loss of offices across the Borough being more of an issue since the change in the relevant permitted development regulations. Furthermore, although the Council had raised concerns regarding the lack of suitable marketing in respect of the previous application in 2015, it is clear from its final delegated report and subsequent appeal representations, that whilst marketing has now been carried out, it considers this to be insufficient to demonstrate that the premises is no longer suitable for office use. I have come to different conclusion to the Council on the merits of the application. Nevertheless, given the change in circumstances highlighted in this case and the reasons for finding the current appeal proposal to be unacceptable, I do not consider that it has behaved unreasonably in relation to this issue.

Conclusion

10. I conclude that for the reasons set out above, on the balance of probability, unreasonable behaviour has not been demonstrated. An award of costs is therefore not justified.

David Cliff

INSPECTOR