

## Costs Decision

Site visit made on 22 August 2107

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

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

**Decision date: 6 September 2017**

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### **Costs application in relation to Appeal Ref: APP/C5690/W/17/3174029 Lord Palmerston Public House, 81 Childers Street, London SE8 5JR**

- 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 Morphuse Construction Ltd for a full award of costs against the Council of the London Borough of Lewisham.
  - The appeal was made against the refusal of planning permission for the partial demolition of existing public house; retention of existing façade; erection of two additional storeys to original public house and erection of five storey rear extension; retention of existing public house use over ground floor and basement levels; associated bin store; formation of 12 x 1 bed flats over upper floors; associated bin store and cycle store at ground floor level; formation of communal roof terrace.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) 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. The applicant is seeking a full award of costs based on what it considers to be the Council's failure to take into account whether conditions or a planning obligation could be used to overcome objections to the proposal. Nor did the Council seek additional information on noise matters or request amendments to the design of the proposal. Furthermore, the Council sought a payment of £7,500 to cover the cost of an assessment of the applicant's Affordable Housing Viability Statement and that matter did not feature in the reasons for refusal. The applicant has, therefore, incurred unnecessary expense in preparing and submitting an appeal and cost claim for a proposal which should have been permitted, subject to conditions.
  3. The Council's pre-application advice (letter dated 18 March 2016) was clear that the effect of noise from the public house use on residential occupiers should be considered. Nevertheless, this matter was not covered in the Noise Exposure Assessment that the applicant subsequently submitted.
  4. Paragraph 16-049-20140306 of the PPG advises that a local planning authority risks an award of costs if it refuses planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead. Equally,
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paragraph 21a-003-20140306 requires any conditions imposed on a planning permission to be enforceable, precise and reasonable.

5. In the absence of any assessment of future noise levels or construction details, it was not unreasonable of the Council to be concerned about whether it would be possible to achieve the required level of sound insulation by adapting the existing structure and, therefore, meeting the terms of any condition. Nor did the submissions at the application or appeal stages adequately explain how the public house use would be managed in order to minimise its effects on residential occupiers. Consequently, I consider that the Council behaved reasonably in not relying on the use of conditions to seek to overcome the effects of noise from the pub use.
6. With regard to the use of conditions to overcome the concerns over the design of the proposal, I have concluded in the main decision that the conditions suggested by the applicant would amount to more than simply agreeing detailed matters. In the absence of drawings to illustrate what the effects might be, it would not be appropriate to leave these matters to be dealt with by condition. Furthermore, the concerns regarding the effect of the proposal on the significance of the non-designated heritage asset and the character and appearance of the area relate to the scale, height and proportions of the proposal. As such, they are not matters which could be overcome by the use of conditions. Therefore, I find that the Council did not behave unreasonably in relation to the use of conditions to overcome the impact of the proposal on the character and appearance of the area.
7. It is apparent from the officer's report that the Council took into account the assessment of the applicant's Affordable Housing Viability Statement in concluding that an agreed financial contribution of £24,113 would be appropriate in lieu of the provision of the affordable housing required by Policy 1 of the Council's Core Strategy and Policy DM7 of its Development Management Policies. To this extent, the payment made by the applicant ensured that a potential objection to the scheme could be overcome. However, no Planning Obligation was provided to secure the agreed contribution and it is, perhaps, surprising that this matter did not form a reason for refusal. Nevertheless, it has not been adequately demonstrated that the absence of a further reason for refusal led to the applicant incurring unnecessary or wasted expense in the appeal process.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

*Simon Warder*

INSPECTOR