



Costs Decision

Site visit made on 17 July 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2019

Costs application in relation to Appeal Ref: APP/X5210/W/19/3229023 35 Pratt Street, London NW1 0BG

- 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 Domino's Pizza UK and Ireland Plc for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against the refusal of the Council to grant subject to conditions planning permission for the change of use from a restaurant (Use Class A3) to hot food takeaway (Use Class A5), installation of extraction and ventilation equipment and associated works.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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. The applicant submits that the Council has behaved unreasonably in refusing the application. Members are fully entitled to disregard or disagree with officers' advice, as long as the Council can clearly demonstrate why a proposal is unacceptable on planning grounds. The applicant does not dispute the fact that members can take a different view to Officers, but contends that no substantial evidence was produced to rebut the applicant's evidence.
4. The applicant considers there is no policy justification to support the first reason for refusal and the assertion that there is an overconcentration of A5 hot food takeaways. With regards the second reason the applicant submitted noise reports to demonstrate that plant equipment would not cause harm with appropriate mitigation measures. The Council's Environmental Health Team was satisfied and a further noise report was submitted (with the appeal) to show that noise from delivery drivers would not cause harm.
5. The Council submit that whilst there is no specific policy relating to distances from schools, and indeed the reason for refusal does not refer to distances from schools, the issue is one of overconcentration and harmful cumulative impact on public health, which Policy TC4 takes account of. With regards impact on residential amenity, the decision was taken with a planning balance. Noise concerns do not stem from the noise extraction systems, but from customer and delivery activity at the premises, which would be different to the

existing restaurant use. The Council therefore contends it has behaved reasonably in expressing its judgement and assessing the application and has substantiated its reason for refusal with objective analysis, with reference to the development plan, the draft New London Plan and other material considerations.

6. Policy TC4 does apply to 'local areas' and requires the health impacts of developments to be assessed. The Council's Environmental Health department objected and provided numerical and spatial evidence of the number of hot food takeaways within a 400m radius of the nearest primary schools, together with data that showed the area has high levels of obesity and deprivation. This is part of the Council's wider work to tackle these issues and encourage healthy lifestyles.
7. In the absence of particular numerical controls on non-retail uses in designated streets the Council sought to use the gathered published data to quantify the number of such premises and make an informed assessment of whether there were too many such premises within the locality of the appeal site. It concluded there were too many hot food takeaways, even though there was no threshold to be measured against. In my decision, I too have made a judgement as to whether there is an overconcentration, but I concluded differently. The Council's evidence was rational and set out its key concerns and provided sufficient information for me to determine the appeal. I find the Council provided substantive evidence and has not acted unreasonably in coming to the conclusion it did.
8. Turning to the second reason for refusal, noise issues relating to plant and machinery were not of concern. However, noise from customers and delivery drivers and their associated comings and goings, together with the number of visits and where they would park is harder to quantify and measure.
9. In light of the nature of the issues, such as unknown customer activity and general comings and goings which are difficult to control even with various management plans, there is an element of judgement required. The policies stated in the reason for refusal do not rely on quantitative thresholds being exceeded or not being met.
10. Nonetheless, the Council did not provide any substantive evidence to rebut the applicant's later noise assessment from deliveries, which was not available to committee members at the time of its decision, or even undertake a basic assessment gleaned from the applicant's other premises in London as a comparison. It did not provide an analysis of how anti-social parking would arise and be a concern. There was no substantive evidence submitted in relation to air quality from delivery vehicles. I therefore find the Council acted unreasonably with regards not providing substantive evidence to justify all of the components of the second reason for refusal.
11. In finding the above, I turn to the issue of whether there was unnecessary or wasted expense. I do not find it unreasonable for the members of the committee to be concerned about the general noise and disturbance impacts on nearby residents, as hot food takeaways are generally known to have associated issues. It was their planning judgement that the proposed use would have a harmful effect on the amenity of nearby residents from a number of factors, that would likely have included local knowledge and concerns of local residents and a local Councillor. It is not unreasonable for any party to seek to

resolve a reason for refusal through the appeal process and to submit additional information to do so, as the applicant did.

12. I find the Council had reasonable concerns about the impact of the proposed development which justified its decision. And in light of my findings on the first reason for refusal, the appeal could not have been avoided so there would not have been unnecessary or wasted expense.
13. The applicant's costs example for a proposed hot food takeaway Mill Hill¹ relates to different reasons for refusal. In that appeal noise and odours were technical matters, rather than the noise and disturbance issues from comings and goings. And alterations to the building did not form a reason for refusal. Therefore, the example is not directly comparable.

Conclusion

14. I therefore find that unreasonable behaviour overall, resulting in unnecessary or wasted expense at appeal as described in the PPG, has not been demonstrated. An award for costs is therefore not justified.

K. Stephens

INSPECTOR

¹ APP/N5090/W/18/3207746