



Costs Decision

Site visit made on 24 February 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2020

Costs application in relation to Appeal Ref: APP/E5330/X/19/3235822 Midpoint Restaurant, Anchor Iron Wharf, Lassell Street, Greenwich, London SE10 6PJ

- The application is made under the Town and Country Planning Act 1990, (the Act) sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Erdogan Garip for a full award of costs against Royal Borough of Greenwich Council.
 - The appeal was against the refusal of a certificate of lawful use or development for "The placing of tables and chairs in the area identified on the submitted plan (below) extending to no more than 10% of the POS1 (or 100 sq.m) and with a capacity of up to 50 covers would be lawful."
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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. Unreasonable behaviour in this context is either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice; to encourage local planning authorities to properly exercise their development management responsibilities; and to discourage unnecessary appeals. The applicant has applied for costs on both procedural and substantive grounds.
4. I will look first at the substantive grounds for the application. I have allowed the appeal and therefore found that the Council's decision was not well-founded. However, it does not follow that their reasoning for refusing the Lawful Development Certificate (LDC) was unreasonable.
5. The applicant considers that the Council failed to properly consider the legal aspects of whether a material change of use would occur due to the proposal. The PPG gives "acting contrary to, or not following, well-established case law" as an example of unreasonable behaviour that may lead to an award of costs. However, although both the Council and the applicant have been deflected by

issues concerning the planning obligation that relates to the land outside of the restaurant, in the Council Officer's report that led to the refusal of the application they have clearly understood the most relevant legal authority. That authority which I have explicitly referred to in my decision, requires a fact and degree judgement to be made regarding the relevant planning unit. The Council made a clear and reasoned judgement about that which differed from mine, but their logic was clear and was not irrational. The Council were not in my view unreasonable in the way that they reached that view. Indeed, Counsel's reasoning in the opinion that the applicant had received in June 2018 differed from my own opinion albeit that the overall result is the same. This indicates that these matters are not black and white or straightforward.

6. Turning to procedural matters, the PPG reaffirms that all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to the appeal, the action of the parties prior to the submission of the application can be taken into account. This does not mean that all of the applicant's concerns about how the Council have dealt with issues related to the use of the appeal site can be adjudicated in this costs application. Opinions regarding the planning obligation and the need to vary it are not directly related to the appeal, in my opinion.
7. The legal opinion of Counsel prior to the submission of the LDC application resulted in the applicant asking for the Council to review their previous views about the need for planning permission. The claim is that there was a lack of engagement by the officers and elected representatives. However, in a situation such as this, it is clear from the Council Officer's report that the 2 parties were unlikely to reach an agreement. There was a clear impasse and the LDC application was the correct way in which to confront this.
8. The Council were threatening enforcement action if the use recommenced but given their opinion, that would be their logical recourse if they considered it expedient. It is not clear to me from the evidence submitted that they were being unduly influenced due to the objections to the previous planning application that was eventually withdrawn prior to the LDC submission or other processes such as the licensing regime.

Conclusion

9. Although I have disagreed with the Council's assessment that led to the refusal of the application, I do not consider that they were unreasonable in reaching that decision. There was clear disagreement between the parties and an appeal was likely to be the only way of resolving this. I have not identified any obvious procedural unreasonableness but even if a different view is taken, the costs of an appeal were always likely to be incurred.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

A Harwood

INSPECTOR