



Costs Decision

Site visit made on 7 September 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 23 April 2024

Costs application in relation to Appeal Ref: APP/A5840/W/22/3312852 373 Lordship Lane, Southwark, London SE22 8JJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Gbolahan Ladipo for a full award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the refusal of planning permission for the subdivision of an existing retail ground floor to create rear, ground floor residential living accommodation with retail space to the front. Replace existing aluminium shopfront with new painted timber shopfront and other associated works.
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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.
3. The applicant considers that the Council has exhibited unreasonable behaviour when it refused planning permission on the basis of issues related to the vitality and viability of the shopping frontage.
4. The PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal. Consequently, it is necessary to consider whether the Council has provided relevant evidence to show that there were reasonable grounds for their view.
5. Regarding the interpretation of Policy P37 of the Southwark Plan (2022), I recognise that it would be possible for potential customers to buy any items on display through contacting the store manager, thereby maintaining a form of active ground floor use. However, while the proposed small retail and display area would widen the choice of goods on sale, the proposed development would still fundamentally reduce the quality of possible interactions between the retail use of the appeal site and the general public. It would not be possible for there to be direct or immediate interactions between the shop front and potential customers. Against this background, it was not unreasonable for the Council to consider that the proposed development would fail to comply with this policy.

6. There is no detailed evidence from either the Council or the applicant regarding the viability of the proposed development. Nonetheless, the replacement of a corner shop with a small retail and display area for art, would be a significant departure from the types of retail uses which characterises this section of the protected shopping frontage. There are no other businesses of a similar size or design in the immediate vicinity, which is otherwise occupied by busy retail shops where the public can directly interact with goods and retail staff. Additionally, the continued vitality of the shopping parade gives a strong indication that the appeal site remains suitable for some form of Class E use. As such, the Council did reach the accurate conclusion that the proposed development would result in an unacceptable impact on the vitality and viability of the protected shopping parade. This was a reasonable conclusion based on the evidence before them.
7. In relation to the successful tiny shops, it is not possible to draw direct parallels to the proposed development, as those referred to by the applicant would still sell directly to the public, ensuring that direct interactions remain possible between customers and the retail use of the building. Other art galleries would not be comparable due to their location, temporary nature or their size. As such, there is no evidence before me that this fundamental principle objection was contrived, given the limited information which was submitted and lack of any relevant comparators. I have found no fault with how the Council subsequently determined the application, regardless of whether the applicant would be able to find a new tenant in the future.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Lo

INSPECTOR