



Costs Decision

Site visit made on 26 February 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 July 2024

Costs application in relation to Appeal Refs: APP/E5330/W/22/3295519 & APP/E5330/Y/22/3295525

Trafalgar Tavern, Park Row, Greenwich, London SE10 9NW

- 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 Trafalgar Tavern Lease Limited for a full award of costs against Royal Borough of Greenwich Council.
 - The appeals were against the refusal of planning permission and Listed Building Consent for the erection of a terrorist mitigating balustrade.
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Decision: the application is refused

Reasons

1. The 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 or wasted expense in the appeal process. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG states that the right of appeal should be exercised in a reasonable manner and goes on to provide examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include failure to produce evidence to substantiate each reason for refusal on appeal.
2. The essence of this application for costs is that, in the applicant's view, the decision to refuse the application was completely unreasonable and none of the reasons for refusal are tenable. However, the Council's decision to refuse planning permission and Listed Building Consent must be considered having regard to the specific facts and circumstances.
3. The appeal site is an extremely sensitive location. The Trafalgar Tavern itself is a Grade II listed building. The site is within the Greenwich Park Conservation Area, and abuts the East Greenwich Conservation Area. The site is also within Maritime Greenwich World Heritage Site(WHS).
4. These designations invoke a statutory duty on the decision maker, as set out sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 , to have had special regard to the desirability of preserving the buildings or their setting or any features of special architectural or historic interest which they possess and paid special attention to the desirability of preserving or enhancing the character or appearance of the conservation areas. This statutory duty must be the starting point for the

- consideration of the applications for planning permission and Listed Building Consent.
5. From that starting point, the National Planning Policy Framework (Framework) confirms that the application for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. In that respect, the Framework reflects the statutory position as set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004.
 6. Although not expressly stated, it is clear from the Development Management Delegated Reports for these applications that the Council has discharged that statutory duty. The Council, as might be expected, identified the designated heritage assets affected by the development and works. It then assessed the impact of that development and works on the significance of those designated assets to arrive at a considered opinion. Each reason for refusal was supported, where applicable, by specialist technical evidence in the form of the consultation responses from the Council's Conservation Officer, the Council's Highway Officer and the Metropolitan Police respectively.
 7. The Council applied its findings to the policies in development plan and found that the development did not accord with it. That was a decision that the Council was perfectly entitled to reach.
 8. The Council considered the material considerations advanced by the applicant and concluded that those material considerations did not indicate that the application should be determined otherwise than in accordance with the development plan. Again, that was a decision that the Council was perfectly entitled to reach.
 9. Indeed, the Council's conclusions in that respect are hardly surprising. The whole premise of the applications was based on advice purportedly given to the applicants by the Metropolitan Police. The applicants provided no evidence whatsoever to substantiate that claim. The applicants provided no evidence whatsoever to substantiate the resilience of the balustrade to terrorist attack. The scenarios for terrorist attack advanced by the applicant to justify the balustrade were, in some cases, of a type that the balustrade simply cannot possibly prevent. The potential problem that the balustrade was purportedly required to solve was therefore misrepresented. The applicants provided no convincing evidence that the balustrade is necessary to prevent or mitigate terrorist attack. The Council was perfectly entitled, and in my view entirely correct, not to be persuaded by that evidence.
 10. In the context of the PPG, the Council produced on appeal evidence to substantiate each reason for refusal. I found that evidence to be compelling but, even if I had taken a different view, the Council's behaviour would have been entirely reasonable in the context of the PPG. Accordingly, the Council cannot be said to have acted unreasonably. It follows that no award of costs is justified.

Paul Freer
INSPECTOR