



Costs Decision

Site visit made on 20 February 2025

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 March 2025

Costs application in relation to Appeal Ref: APP/V2004/W/24/3354883

The New Clarence, 77 - 79 Charles Street, Kingston Upon Hull HU2 8DE

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Chris Colcomb on behalf of Kingston Apartments (Yorkshire) Ltd for a full award of costs against Hull City Council.
 - The appeal was against the refusal of planning permission for change of use from a drinking establishment with incidental accommodation to a mixed-use development consisting of a drinking establishment at ground floor level, and two, 10-bed Houses in multiple occupation (HMO), on the upper floors with external alterations and extension to ground floor
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Decision

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

Reasons

2. The Planning Practice Guidance 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. It is alleged that the council prevented or delayed development which should clearly have been permitted. Refused the application when it was capable of being satisfied by the imposition of conditions. Refused it for a reason that was vague, generalise or inaccurate and unsupported by objective analysis; and then failed to provide evidence to substantiate the reason.
4. The applicant advises that the council sought a change in the description which was not necessary and delayed the proceedings. This was a matter for the parties and has not altered the appeal process. Similarly, the processing of the application before the decision, has not added to the costs of the appeal.
5. The reason for the decision was precise, relating only to a concern with regard to outdoor noise and its impact on the future residents of the first and second floor accommodation.
6. The council's environmental health officer considered that the concerns raised could be addressed by condition. Although not demonstrated, it may be that noise from the beer garden could be controlled. This may however have a knock-on effect on the area immediately outside the front door of the public house. The evidence has not demonstrated that this could be adequately controlled. As policy 49 of the Hull Local Plan 2016 to 2032 (2017) requires that an acceptable level of amenity must be demonstrated when there are sensitive receptors in proximity to

- noisy uses; and demonstrate that adverse impacts of noise can be mitigated, there is a clear shortfall in the evidence provided in this respect.
7. The scope of the noise report was discussed and agreed with the council's officer who did not seek assessments with regard to noise from outdoor sources. Given the council's conclusions, this was clearly unhelpful. However, the onus is on the applicant to satisfy the policy requirements. Whilst in hindsight, that advice represented a shortcoming by the council, as it remains unclear what the findings of a more extensive acoustic assessment would be, I am unclear whether it would have changed the outcome of the application and prevented the need for the appeal. An appeal was pursued in the absence of such evidence despite the clear concern of the council and the requirements of the policy.
 8. In the absence of any provided evidence and the uncertainty that conditions would be able to overcome the concerns raised, I am not satisfied that the council failed to provide evidence to substantiate the reason for refusal. There is clearly a close relationship between the beer garden and bedroom windows; and similarly between the area outside the front door and other bedroom windows. Noise, particularly late at night, would inevitably be a concern for those residents. Certain levels of mitigation could be achieved but it has not been demonstrated that conditions would fully address this concern.
 9. Whilst other appeal decisions were put forward in support of this proposal, this case was considered on its own particular merits having regard to the very specific concerns raised.
 10. Overall, despite the shortcomings of the advice during the application, it was reasonable for the council to take a different view to its officers. The reason for refusal is very clear and there is no evidence, as part of the application or appeal, that suggests that this concern could be overcome by measures that could be required by conditions. Whilst there is clearly an issue with regard to the advice given and the timetable of events could have been improved, I am not satisfied that these represent unreasonable behaviour on behalf of the council. In any event, it is not clear that a refusal would have been avoided had alternative advice been provided.
 11. Following the lodging of the appeal and in light of the policy position, I am not persuaded that there has been any unreasonable behaviour. Any previous shortcomings did not result in greater expense during the appeal process.
 12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is not therefore justified.

Peter Eggleton

INSPECTOR