Costs Decisions

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 21 July 2025

Costs application 1 in relation to Appeal A Ref: APP/V5570/X/24/3350821
131 - 132 Upper Street, London, N1 1QP

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Sager House (Islington) Ltd for a full award of costs against the Council of the London Borough of Islington.
- The appeal was against the refusal of a certificate of lawful use or development for use of basement, ground and first floor as a restaurant (use class E(b)).

Costs application 2 in relation to Appeal B Ref: APP/V5570/W/24/3352244
131 - 132 Upper Street, Islington, London, N1 1QP

- 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 Sager House (Islington) Limited for a full award of costs against the Council of the London Borough of Islington.
- The appeal was against the refusal of the Council to grant prior approval required under a development order.

Decisions

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

2. Cost application 2 – The application for an award of costs is refused.

Guidance on costs awards

3. Parties in planning appeals normally meet their own expenses. However, 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.

Costs application 1 - Reasons

4. The appellant contends that: the refusal of the application for a lawful development certificate (‘LDC’) was groundless and has resulted in an unnecessary appeal; the refusal is preventing development which should clearly be permitted; and there has been a failure to produce evidence to substantiate the reason for refusal.

5. My appeal decision in respect of the LDC application found that the Council’s refusal is well-founded and it follows that I do not consider this to have been groundless, nor to have prevented development which should clearly be permitted.

6. As to the Council’s substantiation of its refusal reason, I accept that a bare statement that the use of the appeal premises was ‘more akin to a bar or pub’ would not represent an evidence-based reason for refusal. However, it is clear

from the Officer's Report on the LDC application that the Council undertook a detailed analysis of the position including by reference to the appellant's evidence, Valuation Office Agency records and details within a withdrawn application.

7. It is plain also that the Council was aware of the existence of a 2008 Permission which included restaurant use but was not persuaded on the evidence available that the actual use of the premises had been primarily as a restaurant. The Council also clearly referenced evidence submitted in relation to notable chefs having been in situ at the premises but took the view that this did not overcome the lack of detailed information as to the actual use of the premises.

8. As outlined in my appeal decision, the absence of enforcement action against a public house use does not evidence actual use as a restaurant and the Council did not therefore act unreasonably in failing to treat it as such. Equally, bearing in mind that the third party evidence from the appellant and Valuation Office records referred to the appeal premises as a public house/bar, it was entirely reasonable and legitimate for the Council to expect the appellant to provide detailed evidence that use had been primarily as a restaurant.

9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Costs application 2 – Reasons

10. As regards the second costs application, the appellant makes separate reference to the two refusal reasons in respect of the prior approval application.

11. The first reason relates to whether or not restaurant use had been demonstrated for a continuous period of at least two years. Submissions of unreasonable behaviour in relation to this refusal reason are dealt with in my reasoning on costs application 1 above.

12. With respect to the second refusal reason, this was that there was insufficient evidence to demonstrate that 'the introduction of residential units would not be adversely impacted upon by the surrounding commercial uses'. The appellant submits that this refusal reason 'cites harm arising from an impossible land use scenario where an unauthorised sui generis public house use exists in conjunction with a permitted development of residential units' i.e. the permitted development right would not be available if the change of use was from a bar/public house use and therefore it was erroneous to consider the implications related to a bar/public house use.

13. While comments in the Officer Report state that the premises was 'previously a bar', noise concerns stemmed primarily from the fact that the premises licence had permitted live and recorded music until late hours, rather than on the basis that the use was as a primarily as a bar. I acknowledge that the Council's statement indicates that if I were to find there had been a restaurant use, noise concerns could be addressed by condition.

14. However, the second refusal reason plainly does not refer to use as a pub/bar and I am mindful that the Council was commenting in the context of a linked appeal for a lawful development certificate. It therefore seems that the Council took the approach at appeal that even an ancillary level of bar use would result in a noise refusal, but if I found there had been use solely as a restaurant, it would be

appropriate to deal with noise concerns by condition. The second refusal reason was not then based on an 'impossible land use scenario' as the appellant suggests.

15. I find again then that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not justified.

V Bond

INSPECTOR