



Costs Decision

Inquiry held on 5 & 6 February 2013

Site visit made on 7 February 2013

by Terry G Phillimore MA MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 March 2013

Costs application in relation to Appeal Ref: APP/L5810/A/12/2180089 Charlie Butler Public House, 40 Mortlake High Street, London SW14 8HR

- 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 Shaun Moynagh, Languard Homes 2020 LLP for a full award, or in the alternative a partial award, of costs against the Council of the London Borough of Richmond upon Thames.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing building; change of use from public house (drinking establishment - Class A4) to residential (Class C3); construction of residential block consisting of 9 apartments on 4 floors plus basement car parking.
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Decision

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

The submissions for the appellant

2. The submissions were provided in writing.

The response by the Council

3. The response was also provided in writing.

Reasons

4. Circular 03/2009 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.
5. The appeal was made against non-determination of the application. It is evident from the amendments made to the application that negotiation between the appellant and the Council had taken place. The further application submitted to the Council also indicates the appellant's willingness to engage in that process. Despite the amendments, the Council maintained a number of objections to the proposal, and these were clearly set out in the putative reasons for refusal. It therefore does not appear that the appeal resulted from an unexplained delay in determining the application or a lack of communication with the appellant.
6. Some of the putative reasons were on subsequently settled matters, which were not pursued at the inquiry. The final position on these reflected the

- outcome of continuing negotiation and clarification of information. No specific allegation of unreasonableness is made in relation to the withdrawn reasons.
7. The Circular notes that planning appeals often involve matters of judgement concerning the character and appearance of a local area or the living conditions of adjoining occupiers of property. That applies with two of the main issues in this case. The Circular goes on to advise that where the outcome of an appeal turns on an assessment of such issues it is unlikely that costs will be awarded if realistic and specific evidence is provided about the consequences of the proposed development.
 8. The Council's planning witness was clearly familiar with the site, regardless of when he first visited it. Although having no specific heritage expertise, he is a relatively experienced planning officer who is qualified in town planning. Furthermore, his proof of evidence and appendices contained a sound analysis of the features of the Conservation Area and the Buildings of Townscape Merit and their settings, indicating an appropriate understanding of the context of the development. While I have not agreed that the proposal would result in harm in this respect, the Council's assessment in terms of footprint, scale, massing and landscaping provided an adequately objective basis for its concerns about impact of the proposal on the heritage asset settings. This is despite that there was no recorded objection from English Heritage or a conservation officer.
 9. The Council's case with respect to visual intrusion was underpinned by a quantitative assessment of the development by comparison with the existing situation in terms of height, massing and distances to affected properties. The concern in relation to overlooking also reflected an analysis of relationships taking account of dimensions and perceptions. The statement of common ground identifies the scope to address overlooking by way of planning condition, and this is an approach adopted in part in my decision in finding the proposal acceptable. However, the potential impact of privacy screening on the appearance of the building and the living conditions of future occupiers were valid concerns to raise in terms of the limitations of such conditions. The nature of living conditions impact as a subjective matter includes the judgement of what is reasonable and the nature of change from an existing situation. There was a sound basis for the Council's concerns taken in the overall context of the development.
 10. The Council's tree objection was supported by evidence from its arboricultural witness, which identified the expected consequence of the proposal on the future prospects of growth of the tree. The effect of roadside pruning on the tree had not been taken into account, but this was also not covered in the appellant's expert written evidence, and is only one factor in considering the relationship of the new building to the tree.
 11. The Council's witnesses made concessions on the relevance of cited development plan policies on amenity and tree matters. However, there is no dispute that the impacts of the development in these respects are material considerations even if it is accepted that there is no conflict with these policies. While the Council had not addressed whether its conclusions on the amenity and tree impact of the proposal would be sufficient to outweigh a finding of accordance with the development plan, given the heritage policy objection such accordance clearly was not its overall position.

12. Certain other concessions were made by the Council's witnesses in terms of there being material omissions in their assessments. Their agreement that these omissions were unreasonable is not in itself determinative of this costs application, which relates to whether or not the evidence put forward substantiated the Council's case. It is the nature of cross examination to explore the weaknesses in a party's case, and in reaching my decision on the appeal I have found against the Council on each of the main issues having regard to the evidence as tested. However, the Council's evidence was based on more than vague, generalised or inaccurate assertions about the proposal's impact. It was of a substantial nature and provided a respectable basis for its objections. The evidence also carried out an appropriate balancing exercise in weighing the benefits of the proposal against the asserted harm.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated, and neither a full nor partial award of costs is justified.

T G Phillimore

INSPECTOR