
Costs Decision

Site visit made on 2 December 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th January 2020

Costs application in relation to Appeal Ref: APP/Z4310/W/19/3237413 160A, Stuart Road, Walton, Liverpool L4 5QY

- 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 Mr Brian Rice on behalf of North Liverpool Windows for a partial award of costs against Liverpool City Council.
 - The appeal was against the refusal of planning permission to use premises for assembly of roofing modules, install replacement roof and carry out associated external works.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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 expense in the appeal process.
3. The PPG states that an example of unreasonable behaviour by local planning authorities is not determining similar cases in a consistent manner.
4. Planning application ref 18F/0371 sought planning permission for a similar use of the appeal site as the subject appeal proposal. The application was refused for two reasons, relating to noise and disturbance as a result of comings and goings to the site and highway safety. Neither of the two reasons had regard to the effects of the internal operations of the use on neighbouring residents. It is common ground that the proposed internal operations within the building for application ref 18F/0371 are very similar to the subject appeal proposal. The revisions in planning application ref 18F/2450 therefore focused on the Council's two reasons for refusal. The introduction of a new reason for refusal, which does relate to the internal operations of the proposed use, would therefore have come as a surprise to the appellant.
5. I acknowledge that the Committee were not bound by their professional officer's advice. Nevertheless, local planning authorities are expected to determine applications in a consistent manner. There is no substantive reason given as to why the internal operations of the proposed use are now deemed to be harmful when previously they were not. This is clearly an inconsistent approach to determining two very similar proposals on the same site. Such behaviour is unreasonable.

6. As a result of this unreasonable behaviour, the appellant has incurred unnecessary expense in preparing the grounds of appeal relating to the effect of the internal operations of the proposed use on the living conditions of neighbouring residents, with regard to noise and disturbance. Had the planning application been determined consistently with the first application, it is unlikely that this ground of appeal would have been necessary.
7. I therefore find that the Council have acted unreasonably in respect of failing to determine the two similar cases in a consistent manner, which has resulted in the applicant incurring unnecessary and wasted expense and that a full award of costs is justified.

Conclusion

8. I conclude therefore that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a partial award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Liverpool City Council shall pay to Mr Brian Rice on behalf of North Liverpool Windows, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the effect of the internal operations of the proposed use on the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance.
10. The applicant is now invited to submit to Liverpool City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alexander Walker

INSPECTOR