
Costs Decision

Site visit made on 1 October 2020

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2020

Costs application in relation to APP/X5990/Z/20/3253288

1 Berkeley Street, London W1J 8NE

- 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 Infinity Outdoor Limited for a full award of costs against the City of Westminster Council.
 - The appeal was against the refusal of consent to display of three temporary non-illuminated commercial signs at Berkeley Street - 20m (w) x 17.5m (h), Piccadilly - 40m (w) x 17.5m (h) and Dover Street - 18.5m (w) x 17.5m (h) within scaffolding shroud - incorporating a 1:1 facade replication of existing building - surrounding 1 Berkeley Street.
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Decision

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

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. The timeline for the application from receipt by the Council to a decision was comfortably within the 8-week target. While the applicant considers the relatively short period to be indicative of the Council's undue haste to reach a negative decision, it should not be criticised for dealing with applications in a timely manner. The Council is, however, obliged to provide a well-reasoned decision so that it's clear why a particular determination was reached.
4. Section 4 of the Officer's report is entitled 'consideration of the proposal' and it contains 2 paragraphs. The first paragraph makes several points about the Council's general stance towards scaffold screening and to the outcome of recent applications and appeals. The second paragraph refers to a different site and is clearly made in error, for which the Council has apologised. That mistake would be unfortunate if the reasons why consent was to be withheld were clear from the rest of the Officer's report. However, that report offers few clues as to the way in which the Council considered that the amenity of the area would change if the proposal to proceed.
5. In its response to the costs application, the Council places some reliance on the reason for refusal, which is inevitably a brief summary statement of the Council's objections. It does not (nor would it be expected to) explain exactly how the size and location of the advertisements would be harmful to the amenity of the area or in relation to the identified heritage assets.

6. The Council also refers to the number of applications and appeals for advertisements on shrouds that have been refused or dismissed with policy support. Whether or not a particular decision is in line with that stance is not a matter that in itself should be determinative. To do so would put to one side an important principle, which is that each application or appeal should be assessed on its own merits. Such an approach would fundamentally undermine confidence in the decision-making process.
7. Mistakes happen. I recognise that regularly producing reports and decisions that are completely free of factual and typographical errors can be a challenge. However, where the outcome of a planning decision hinges on an assessment of a particular issue, it is reasonable to expect realistic and specific evidence to be put forward to explain the consequences of the proposal. While the Council asserts that it did assess the proposal fully and carefully, the evidence before me does not back up that claim. I am unable to conclude that the Council's decision was supported by any significant objective analysis of the proposal.
8. For all of these reasons, I consider that the Council has behaved unreasonably. It has failed to clearly show why the proposal should not proceed and has not substantiated the reason for refusal. The Council's evidence does not provide a respectable basis for its stance. It has prevented a scheme that for reasons given in my decision I consider should have been permitted. The applicant has had to recourse to appeal and incur the associated costs of doing so, which in my opinion could and should have been avoided.
9. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. A full award of costs is, therefore, justified.

Costs Order

10. 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 the City of Westminster Council shall pay to Infinity Outdoor Limited, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to the City of Westminster 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Gary Deane

INSPECTOR