
Costs Decision

Site visit made on 25 August 2020

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th October 2020

Application A: Costs application in relation to Appeal Ref:

APP/Q0505/W/20/3248552

73 Regent Street, Cambridge CB2 1AB

- 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 Euronet Worldwide for a full award of costs against Cambridge City Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for proposed installation of a Euronet NCR Self Serv 26 ATM through the front elevation shopfront glazed window to the right of the entrance door, left of the curved corner window as a through glass installation. NCR Self Serv ATM fascia with blue surround and an illuminated blue and white ATM fascia sign with blue lettering "ATM" out of a white Background. ATM slim line illuminated projecting sign is to be installed above the shop front fascia above the entrance door with blue lettering "ATM" out of a white background.
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Application B: Costs application in relation to Appeal Ref:

APP/Q0505/W/20/3248553

73 Regent Street, Cambridge CB2 1AB

- The application is made under section 322 of the Town and Country Planning Act 1990, Regulation 17 of the Town and Country Planning (Control of Advertisements) Regulations 2007, and section 250(5) of the Local Government Act 1972.
 - The application is made by Euronet Worldwide for a full award of costs against Cambridge City Council.
 - The appeal was against ATM illuminated fascia sign with blue lettering "ATM" out of white background. Fascia Sign Width 0.548mm Fascia Sign Height 0.197mm. Dimension from ground to underside of sign 1.500mm. Maximum height of lettering 6mm. Maximum projection 4mm Static illumination. 100cd/m².
ATM illuminated projecting slim line sign Projecting Sign Width 400mm. Projecting Sign Height 400mm Dimension from ground to underside of sign 3250mm. Maximum height of lettering 6mm Maximum projection 400mm Static Illumination. 100 cd/m².
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Decisions

1. Application A: The application for an award of costs is allowed in the terms set out below.
2. Application B: The application for an award of costs is allowed in the terms set out below.

Reasons

3. The costs applications relate to linked appeals, relating to the installation of an ATM and associated signage. The issues are the same for both and thus I have dealt with them together.
4. 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.
5. The applicant in this case contends the Council has been unreasonable with regard to the failure to determine the applications for the ATM and the associated advertisement consent in the statutory time limit. They also state that there had been no communication from the Council on any progress on either application.
6. The PPG states that local planning authorities are at risk of an award of costs if, in failing to determine the application, they do not provide a proper explanation to the applications. It also states that in appeals against non-determination, the local planning authority should explain their reasons for not reaching a decision and why permission would not have been granted had the application been determined within the relevant period.
7. The Council did not provide any appeal statements, nor did they respond to the costs application. There is no explanation before me why applications that were validated by the Council on 17 September 2019 were not determined by 9 March 2020, when the appeals were submitted. This is a significant period of time in which to make a decision, with no clear reason given as to why there was a delay. On the face of it, there is nothing inherently complicated or unusual about the applications that would have led to such delays, nor is there any evidence to suggest the Council did not have all the information they needed to determine them. Furthermore, it does not appear that they communicated with the applicant to explain the delays or ask for any additional information. I also note that the applicant's initial submissions suggested the site was not in a Conservation Area. This is not the case. As this misapprehension was carried through to the appeal evidence, it appears that the Council did not seek to correct a fairly fundamental point at an early stage. This may have had a significant influence on the outcome of the process.
8. The Council also failed to provide any information relating to how they would have determined the application had they had the opportunity to do so. In addition to not providing any form of evidence to explain their position, they also failed to provide all of the necessary information, including copies of any relevant policies or all representations made on the application, within the stipulated timescales. Indeed, the fact they had failed to provide all representations made on the applications only came to light when they were asked to provide copies of relevant policies. The PPG makes it clear the local planning authorities are at risk of an award of costs where there has been a delay in providing information or other failure to adhere to deadlines.
9. Taken together, all of these factors point to clear evidence of unreasonable behaviour on the part of the Council. Notwithstanding this, I have a statutory duty to give special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area. This is also reflected in the

National Planning Policy Framework. On this basis, I have concluded that the ATM and associated advertising would cause unacceptable harm and thus the appeals have been dismissed. However, this does not mean that costs cannot be awarded.

10. Although the Council may have come to the same conclusion, I cannot be certain this would have been the case. Moreover, if the Council had refused the applications in a timely manner, there is no guarantee that the appellant would have decided to proceed with an appeal, particularly if they considered there was little prospect of being successful. Similarly, there is no indication that any concerns were raised with the applicant at any point during the consideration of the applications. As such, they are unlikely to have been aware of any potential issues. Based on the evidence before me, it would seem that lodging appeals on the basis of non-determination was the only logical course of action for the applicant.
11. The evidence submitted by the applicant is not significant for either appeal. They also failed to take advantage of the opportunity provided to make comments on the representations made on the applications. Nevertheless, there would still have been some costs associated with submitting the appeals. In light of my findings above, I consider this would constitute unnecessary or wasted expense in the context of the PPG.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified for both cases.

Costs Orders

13. 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 Cambridge City Council shall pay to Euronet Worldwide, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Cambridge 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.

S J Lee

INSPECTOR