
Costs Decisions

Site visit made on 2 September 2020 by Hannah Ellison BSc (Hons) MSc MRTPI

Decision by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Application A:

**Costs application in relation to Appeal Ref: APP/X5210/W/20/3249374
335 West End Lane, London NW6 1RS**

- 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 Stephen Balsam for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against the refusal of permission for a new shopfront and decking seating area, with fascia advertising, shutter box and retractable awning.
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Application B:

**Costs application in relation to Appeal Ref: APP/X5210/Z/20/3249368
335 West End Lane, London NW6 1RS**

- 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 Mr Stephen Balsam for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against a new shopfront and decking seating area, with fascia advertising, shutter box and retractable awning.
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Decisions

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

Procedure

3. An Appeal Planning Officer has set out the recommendation below, to which the Inspector has had regard before deciding the applications.
4. The applications relate to two different proposals at the same address. Given that both have a similar case for seeking an award of costs I have addressed them within the same decision letter.

Reasons

5. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, 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.

6. The applicant's case for seeking an award of costs is grounded in substantive matters, specifically that the Council failed to acknowledge amended plans and disregarded other examples of advertisements and glazed shopfronts within the locality. Additionally, the applicant feels the Council acted unreasonably due to the delays in validating and determining the applications.
7. The PPG makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. However, awards of costs cannot extend to compensation for indirect losses from a delay in obtaining planning permission or advertisement consent. Moreover, I acknowledge that the proposals were implemented prior to the determination of the application. Consequently, I cannot find that the delay in the determination of the application as unreasonable behaviour on the Council's part which resulted in unnecessary or wasted expense.
8. The applicant is concerned that the Council failed to acknowledge amended plans however, having regard to the Council's officer report, I note there are various references to revised drawings. Whilst there is no specific mention of the alterations to the design of the awning or seating area, and the revised drawings were omitted from the decision notice, from the information before me there is no doubt in my mind that the Council made their assessments on the amended drawings.
9. The planning decision is one which is a matter of judgement and from the information before me it is clear that the Council's objections to the advertisement centre around the effect on the visual amenity of the host building and wider area. This was clearly supported with substantive reasons based on the assessment of the site and interpretation of policy. As such, I find that the Council's failure to refer to other examples of fascia's would not have resulted in a different decision.
10. Whilst the failure to demonstrate consistency in decision-making can amount to unreasonable behaviour, the Council's officer report clearly references other shopfronts and external seating areas in the locality and makes clear distinctions between them and the proposed development. Indeed, as I have found in the supporting appeal decisions, the limited information submitted in respect of the other examples failed to demonstrate that they are directly comparable to the appeal proposal. I cannot therefore reach the conclusion that the Council acted unreasonably in this regard.
11. I note there are fundamental disagreements between the parties relating to the merits of the proposal and to my mind, those matters were unlikely to be resolved during the application process and thus could only be dealt with at appeal. Therefore, the appeal process was unavoidable and consequently I find that the Council has not acted unreasonably and thereby caused the applicant to incur unnecessary or wasted expense. A claim for costs is not therefore justified and accordingly Application A and Application B are hereby recommended for refusal.

Hannah Ellison

Appeal Planning Officer

Inspector's Decision

12. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the applications for an award of costs are refused.

Susan Ashworth

INSPECTOR