
Costs Decision

Site visit made on 25 November 2020

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2021

Costs application in relation to Appeal Ref: APP/U4230/H/20/3252975 Manchester Media Wall, Trinity Way, Strangeways, Salford M3 1NH

- 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 Ocean Outdoor Ltd for a partial award of costs against Salford City Council.
 - The appeal was against a refusal to grant express consent for 1 x full motion digital illuminated screen measuring 24.576m (w) x 5.760m (h).
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Decision

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

Preliminary Matters

2. A representation from an interested party was received after the relevant deadline. I admitted the representation and invited comments from the appellant and the Council, which were received on 30 November 2020 and 1 December 2020 respectively. The appellant's final comments on the Council's response were received in a letter dated 7 December 2020 (reference: 3203/08E-2012PO01dl).
3. The appellant seeks a partial award of costs in respect of the costs of preparing the comments in that letter dated 7 December 2020. I have considered the costs application accordingly.

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party which has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
5. The PPG advises that local planning authorities (LPAs) are at risk of an award of costs for introducing fresh and substantial evidence at a late stage or prolonging the proceedings by introducing a new reason for refusal, for vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, for failing to approve a scheme that is the subject of a recently expired approval where there has been no material change in circumstances or for refusing on grounds capable of being dealt with by conditions.

Views from nearby apartments

6. In its response to the interested party's letter, the Council refers to the scale and design of the advertisement as being 'clearly visible from a significant number of apartments Anaconda Cut and GreenGate'. That statement directly follows a sentence in which the Council states that the hoarding 'results in an adverse impact on the character of the area'. The Council's comments make no reference to outlook or to the living conditions of the occupants of the apartments in those two buildings.
7. In that context, it is evident that the Council's comments regarding the visibility of the advertisement from those apartments related to what it considered to be its effects on character and appearance or 'visual' amenity, rather than implying that the scheme would have adverse implications for the 'residential' amenity of their occupants with regard to their living conditions.
8. The Council has consistently raised concerns regarding the advertisement's effects on the area's character throughout its case. Those concerns are clearly explained and substantiated by the Council in its submissions, including with reference to the presence of residential apartment buildings recently built nearby.
9. As part of considering such effects it is necessary to consider the advertisement in its context. That includes private views from residential properties as well as public views. It was evident from my site visit that the advertisement would be visible from parts of those nearby buildings referred to by the Council, as well as from the public realm nearby.
10. Therefore, the Council's comments that the advertisement would be visible from apartments in Anaconda Cut and GreenGate do not amount to the introduction of a new reason for refusal or new evidence beyond the scope of matters already identified in its previous submissions. The comments thus do not constitute unreasonable behaviour as defined in the PPG.

The implications for the construction of the riverside walkway

11. The matter of whether it would be practically possible to construct the riverside walkway with the advertisement in place is not specifically mentioned in the Council's reasons for refusal, which refer to substantive matters of amenity and public safety. However, the highway authority's concerns in that regard are reported in the Council's report. The appellant thus had the opportunity to identify and comment on the matter and on those concerns raised as part of its appeal submissions and statement of case.
12. The highway authority's reservations as to whether the walkway could be built with the advertising structure in place are referred to in the interested party's representation. In responding to those comments from the interested party it was not unreasonable for the Council to reiterate those concerns, including with reference to details on a plan received from the appellant after the Council had submitted its statement. Doing so did not represent the introduction of new evidence, a new reason for refusal, or a new issue which had not previously been identified. I am satisfied that the Council has reasonably and adequately substantiated its concerns in that regard with reference to the evidence which was before it.

13. Furthermore, the walkway's construction was raised separately by the interested party in any event. Even had the Council not referred back to it in their subsequent comments, it was thus a matter which had been put before me to consider and which the appellant would have had to address, as indeed they did in their response to the interested party's comments on 30 November.
14. In any event, for the reasons given I conclude that the Council's comments on the riverside walkway in its response to the interested party's representation do not constitute unreasonable behaviour as described in the PPG.

Other Matters

15. In its submissions the Council has consistently expressed concerns about the implications of a temporary consent and the practicalities of imposing a condition in that regard. Nonetheless, it was not unreasonable for the Council to also comment on or agree the wording of a condition to that effect which could have been imposed in the event that I had allowed the appeal. It is common practice for the wording of planning conditions to be suggested or agreed by LPAs as part of the appeal process. Doing so proactively on a 'without prejudice' basis does not preclude an LPA from also expressing concerns regarding the matters referred to in those conditions or the practicalities or implications of such conditions as part of its case. Nor was it unreasonable for the Council to reiterate its concerns regarding the implications of a temporary consent in the light of similar concerns that were subsequently raised by an interested party.
16. Since consent was granted in 2014 for an advertisement on the site, it is evident that a number of apartment buildings have been completed and occupied nearby. The presence of those buildings in the wider context of the site represents a material change in circumstances since that previous approval. The Council's submissions clearly articulate how it considers the character of the area has changed since that time, including with reference to those recently-constructed residential buildings nearby. In that context, it was not unreasonable for the Council to come to a different conclusion in this case.
17. Given the Council's concerns regarding the effect of the advertisement on the area's existing character, I cannot be certain that its objections to the scheme would have been overcome even had further discussion with the appellant taken place. It will be seen from my decision that I agree with the Council's conclusion regarding the harm to that existing character and to the amenity of the site and its surroundings in that regard. Therefore, the Council's actions have not resulted in delay to a scheme which should clearly have been approved and do not amount to unreasonable behaviour as described in the PPG.

Conclusion

18. For the reasons given, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case.

Jillian Rann
INSPECTOR