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## Costs Decisions

Hearing held on 8 July 2021

Site visit made on 9 July 2021

**by JP Sargent BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4<sup>th</sup> August 2021**

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### **Costs application in relation to Appeal Ref: APP/Z0116/W/20/3260461 Public Realm adjacent to Colston Avenue, Bristol**

- The application is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972.
  - The application is made by Interpolitan Limited for a full award of costs against Bristol City Council.
  - The Hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the temporary art installation for a period of 2 years entitled 'A Surge of Power (Jen Reid) 2020' on the plinth of the former slave trader Edward Colston.
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### **Costs application in relation to Appeal Ref: APP/Z0116/Y/21/3269256 Public Realm adjacent to Colston Avenue, Bristol**

- The application is made under sections 20, 89 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and section 250(5) of the Local Government Act 1972.
  - The application is made by Interpolitan Limited for a full award of costs against Bristol City Council.
  - The Hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for listed building consent for the temporary art installation for a period of 2 years entitled 'A Surge of Power (Jen Reid) 2020' on the plinth of the former slave trader Edward Colston.
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## **Decisions**

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

### **The submissions for the applicant, Interpolitan Limited**

2. The Council acknowledged that the applications were valid and so acted unlawfully in turning them away. Moreover, in its submissions the Council gave no evidence about its heritage position. There was therefore no clarity on the substantive planning matters.
3. As a result, the Council acted unreasonably, causing the applicant to incur unnecessary expense as a consequence.

### **The response by the respondent, Bristol City Council**

4. The Council accepted it took a conscious decision not to validate the applications despite them being validly made. It acknowledged this was unusual and that such a course of action was done without any legal basis. However, there were unique circumstances. At that time there was much

tension in the city, and it was concerned this proposal could well ignite disturbances. Therefore, mindful of its wider responsibilities, the Council acted in the way it did to avoid further disorder.

5. Before the applications were submitted the Mayor had announced the establishment of the 'We Are Bristol History Commission' (the History Commission) and under its remit the use of the plinth would be democratically decided. The Mayor therefore reached out to the artist of this proposed statue, advising against pursuing it as it was premature, but that advice was ignored.
6. Whilst the applicant is entitled to lodge the appeal, by placing the statue on the plinth unauthorisedly it has shown a disregard for the planning process. Moreover, as the Council, as owner of the plinth, will not allow the proposal to be sited there, the appeals have not been a good use of public money.
7. The application for an award of costs should therefore be dismissed.

### **Reasons**

8. The *Planning Practice Guidance* advises that costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
9. The Council accepted there was no legal basis under the relevant planning legislation for it to make the conscious decision to neither validate nor invalidate these applications, especially as it acknowledged they were validly made. I do not doubt that the Council was concerned about the tension in the city at the time. However, no substantive evidence has been submitted to justify or support the view that considering this proposal would cause harm in that regard. Therefore, as it had no legal basis to act as it did and was otherwise unable to justify its approach, I consider such actions were unreasonable.
10. Moreover, the Council has provided no evidence in the appeal process to show it considered the proposals were objectionable on heritage grounds or in relation to any other planning matters. When offering its putative reasons for refusal, it could have cited any such concerns alongside those about the effects of the proposal on the role of the History Commission, but that was something it did not do. The Council also accepted that its concern in relation to the History Commission was only relevant to this decision insofar as it diluted the weight that should be given to any stated public benefits, and that concern did not affect the planning merits of the scheme. Clearly, if it had found no harm would in fact have been caused (and as stated above no such harm was identified) then those concerns would not have been relevant in the decision-making process. Consequently, there is no basis to consider that had the applications in fact been validated, then the Council, as local planning authority, would have refused them. As a result, I cannot assume that even if the applications had proceeded the appeals would have been required in any event. Therefore, on the submissions before me I find them to have been an unnecessary expense for the applicant.
11. Whilst the Council as landowner has said the proposed statue would not be allowed on the plinth, it is still open for the applicant to seek planning permission and listed building consent through the appeal process as that could assist it in negotiations in relation to this ownership issue. Moreover, while the

statue was placed on the plinth without planning permission or listed building consent that does not have a bearing on the merits of this costs decision.

### **Conclusions**

12. Accordingly, I conclude unreasonable actions by the Council resulting in unnecessary expense have been demonstrated. I therefore conclude these costs applications should be allowed.

### **Costs Order**

13. In exercise of the powers under section 250(5) of the Local Government Act 1972, Schedule 6 of the Town and Country Planning Act 1990 as amended, Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bristol City Council shall pay Interpolitan Limited 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. Interpolitan Limited is now invited to submit to Bristol 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.

*JP Sargent*

INSPECTOR