
Costs Decision

Hearing Held on 29 June 2021 and 30 June 2021

Site visit made on 6 July 2021

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Costs application in relation to Appeal Ref: APP/B4215/W/20/3260989 35 Demesne Road, Manchester M16 8HJ

- 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 Dr Ali Roomi (Bollin Homes Ltd) for a full award of costs against Manchester City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of the property.
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Decision

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

The submissions for Dr Ali Roomi (Bollin Homes Ltd) (the appellant)

2. The application was made in writing before the hearing and added to verbally at the hearing. In summary the submissions are:
 - The Council has provided conflicting information as to whether it considers the building dangerous. Its claims that the building is not dangerous are unsubstantiated by any evidence. The appellant has therefore been put to the unnecessary expense of commissioning a structural survey. The Council has subsequently failed to say whether the building is dangerous or why it disputes that the building is dangerous in the light of the appellant's surveys.
 - The Council has unreasonably failed to acknowledge that the building is incapable of reasonably beneficial use, having been derelict and removed from the valuation list in 2009. The appellant therefore felt compelled to provide a quantity surveyor's report to demonstrate that restoring the site to such a use was not economically viable.
 - The appeal could potentially have been avoided if the Council had provided complete and consistent assessments of the site.
 - There was disengagement in attempts to co-ordinate an agreed statement of common ground (SoCG) with the Council.
 - The delay in receiving appropriate documentation from the LPA relating to the planning application has led to the appellant having to take time off work and subsequent loss of earnings.

- Costs have been incurred in relation to the appellant having to prepare and submit the appeal and expert witnesses appearing at the hearing.
- Additional costs have been incurred in relation to the maintenance of the site since the application was refused.

The response by Manchester City Council (the Council)

3. A written response was provided to the appellant's original written application. A verbal response was provided to the addition to the application at the hearing. In summary the responses are as follows:
 - When determining the application, the Council officer took account of the information which had been supplied by the appellant at that time and advice from colleagues regarding the state of the building. Although in a dilapidated state, the building is located far from the site boundaries and was not considered a danger to the general public at that time. Its condition may have deteriorated and it may have become dangerous since the application was determined. The Council has noted and has not questioned the findings of the further structural report submitted with the appeal.
 - The requirements of the Section 215 notices relating to the appeal property and 33 Demesne Road have not been met.
 - The Council's report sets out its view that there has been deliberate neglect to the heritage asset and that its deteriorated state should not be taken into account, in accordance with the National Planning Policy Framework.
 - The Council's report sets out that the Council did not consider commercial viability to be material to the consideration of an application for demolition. No viability information or detail of redevelopment options was provided.
 - The Council considered the proposal on its merits in the light of relevant local and national policy and other material considerations. It was considered contrary to those policies and was refused accordingly.

Reasons

4. The Planning Practice Guidance (PPG) advises that parties in planning appeals normally meet their own expenses, but 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 makes it clear that costs applications may relate to events before the appeal was brought, but that costs unrelated to the appeal are ineligible and costs awards cannot extend to compensation for indirect losses such as those which may result from alleged delay in obtaining planning permission. I have considered the application accordingly.
6. The PPG advises that local planning authorities are at risk of an award of costs for failure to produce evidence to substantiate each reason for refusal on appeal, for vague or generalised assertions about a proposal's impact which are unsupported by any objective analysis, for delay in providing information or lack of co-operation with the other party or for preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy or other material considerations.

7. The onus is on an applicant to provide relevant information to support a proposal. It is evident from the Council's written submissions and verbal evidence that it took the appellant's structural surveys into account in reaching its decision and in maintaining its objection to the proposal at appeal. It was not obliged to provide its own structural report, provided that it is clear why it came to the decision that it did based on the evidence which was before it.
8. Although not expressly stated by the Council at the hearing, I have been provided with an email from its building surveyor expressing a view that the building was dangerous¹. However, as is also stated in that email, and as the Council clarified at the hearing with reference to the building's distance from its boundaries, it does not consider the building a danger to the general public. It is sufficiently clear that it was in that context that the Council principally considered the proposal. The Council also explained at the hearing why it considered that the building could be repaired, based on the works recommended in the appellant's 2020 structural report and evidence given by the appellant's structural expert at the hearing.
9. Furthermore, the Council set out in its written and verbal submissions that it considered that the building had been subject to deliberate neglect and that, notwithstanding the appellant's structural surveys, the deteriorated state of the building should not be taken into account. It is clear that this affected the weight that the Council afforded to the appellant's structural evidence.
10. The weight to be afforded to evidence is a matter of judgement for the decision maker. I have come to a different conclusion as to whether the building would practically be capable of repair and whether it has been subject to deliberate neglect and I have afforded different weight to that evidence, including with regard to the safety of the building. However, it is evident that the Council has considered the appellant's structural surveys and it has explained why it reached the conclusions that it did, including with reference to that evidence. The Council was not unreasonable in reaching those conclusions or affording the evidence the weight that it did as a matter of planning judgement.
11. Although the Council did not produce its own financial evidence, it evidently reviewed the appellant's financial information and has explained why it gave it little weight, with reference to the fact that it included only costs and did not comprise a full viability assessment. I have afforded little weight to that financial evidence for similar reasons. Although I have come to a different conclusion overall, the Council was not unreasonable in affording it the weight that it did or reaching the conclusions it did, as a matter of judgment.
12. I have little information before me regarding the discussions which took place between the Council and the appellant in the production of the SoCG. However, a SoCG was provided, which clearly sets out the areas of agreement and disagreement. The fact that the Council did not agree with the appellant's statements is not unreasonable in itself, as the SoCG is intended to identify areas of ongoing disagreement as well as matters which are not in dispute. Where agreement was not reached, the Council provided further information or referred to its previous submissions setting out its position on those matters. Therefore, unreasonable behaviour has not been demonstrated in that regard.

¹ Page 3 of the appellant's final comments: 'Response Statement by Bollin Homes Ltd' dated 27 December 2020.

13. Following the Council's decision, the appellant requested a copy of the Council's report and other relevant correspondence via email on 22 December 2019. The Council provided a copy of its report on 10 January 2020, not an unreasonable response time taking into account the intervening Christmas and new year holiday period. Based on correspondence provided, there appears to have been a somewhat longer delay in providing the appellant with copies of comments relating to the application. However, comments from interested parties and relevant consultees were reported and summarised in the Council's report, which was provided in a timely manner. Therefore, the delay in providing copies of the comments themselves has not demonstrably led to further delay and does not comprise unreasonable behaviour.
14. For the reasons given, I conclude that unreasonable behaviour has not been demonstrated. Therefore, the Council's actions have not led to an appeal which could otherwise have been avoided. Accordingly, it follows that the appellant has not been put to unnecessary or wasted expense in the appeal process.

Conclusion

15. 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