
Costs Decision

Site visit made on 13 April 2021

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2021

Costs application in relation to Appeal Ref: APP/Z4310/D/21/3268615 72 Adelaide Road, Liverpool L7 8SG

- 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 Emperor Property for an award of costs against Liverpool City Council.
 - The appeal was against the refusal of planning permission to install new windows and doors to the front and rear, two roof lights to front elevation and to construct a dormer to rear elevation and carry out associated works.
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. Irrespective of the outcome of an appeal, the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. In summary, the applicant considers an award of costs is justified for the following reasons: i) there was a substantial delay in the Council determining the application due to delays with consultations, displaying the site notice and advertising the application; ii) the Council considered the proposal to include a change of use to a House in Multiple Occupation (HMO) and to include certain works which the applicant considered to be Permitted Development (PD); iii) the Officer Report (OR) and consultee comments were not readily available to the applicant; iv) the Council didn't take full account of its own policies, emphasised the Article 4 Direction, did not recognise the positive enhancements of the proposal in a planning balance and the reasons for refusal were not supported by policy; v) overall there was a lack of communication from the Council and additional time was taken undertaking site visits and chasing up the Officer.
4. The Council claim, in response, that at the time the application was submitted the LPA was adjusting to the new working arrangements

prompted by the Covid 19 pandemic, which resulted in significant delays in determining applications. The Council suggest that the delay in determination was also due to parties agreeing extensions of time to the determination date, to allow the applicant to submit a heritage statement and revised proposals. The Council is of the view that Council Officers communicated with the appellant throughout the process, which included explaining in detail the reasons for the objections to the proposal. Additionally, it is asserted that the applicant was informed that the OR was publicly available on the Council's website, and that this included a full explanation of the Conservation Officer's consultee comments.

5. From the evidence before me, I have no doubt that there has been a significant delay in determining the application. Although Covid 19 will evidently have had some impact on determination times, it is evident that there were other reasons for the delay. Additionally, it appears that both parties played a part in the delay, though from the evidence before me I am not able to conclude the extent to which each party contributed to the delay in determination.
6. However, even if the Council did not communicate with the applicant to a standard they expect and which they consider to be unreasonable, such matters have not resulted in the appellant incurring wasted time or expense in the appeal process. It seems to me that even if there were no delays and communications were of an agreeable standard, the Council would have still refused the application, thereby leaving the applicant with the option of pursuing an appeal. Therefore, if the applicant wishes to pursue such matters further, I suggest the Council's complaints procedure is potentially the appropriate method for dealing with them.
7. With regard to matters relating to PD rights and a change of use that was not applied for, I note that the issue of whether the site was to be used as a HMO was raised in representations. As such, I consider the matter had to be addressed in the OR. The matter is raised in the OR, and it clearly says that the description of development does not include a change of use. It subsequently says that as the applicant could use the property as a 6 bed HMO without planning permission, the assessment was confined to the operational development applied for.
8. In respect of PD rights, although I have reached a different view to the Council in the associated appeal decision on the matter of the impact of the proposed alterations to floors & ceilings on the appearance of the building, the Council is entitled to reach the view that it did. Thus, in the Council's opinion, the internal alterations had a material impact on the external appearance of the property and therefore such works were deemed to be development that required planning permission.
9. On matters of taking account of and referencing policies, the OR lists the range of policies relevant to the determination of the application and the relevant policies are referred to in the reasons for refusal. Although the applicant considers the proposal satisfies such policies, this appears to be a difference of opinion, rather than the Council not acknowledging development plan policies.

10. In terms of the planning balance, although this could be more clearly laid out in the OR, the OR does refer to the proposal including the reinstatement of some traditional details and that these would enhance the appearance of the property. The Officer concludes that these aspects would not outweigh the harm identified.
11. For the reasons outlined above, I therefore conclude that it has not been demonstrated that the Council's behaviour during the application process was unreasonable behaviour which caused the applicant to incur unnecessary or wasted expense in the appeal process, as described in the PPG. Therefore, an award of costs is not justified.

J Williamson

INSPECTOR