
Costs Decision

Site visit made on 7 September 2021

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 29th September 2021

Costs application in relation to Appeal Ref: APP/W4325/W/21/3272847 Golf Sign Co, 65-69 Chester Road, Birkenhead CH41 9AW

- 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 Martin Mckane (Titans Gyms Ltd) for a full award of costs against Wirral Metropolitan Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for change of use of the existing building from a sign shop with B1 and B2 use to a gym and fitness centre with D2 leisure and assembly use.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only 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.
3. The applicant considers that the Council's delay in validating and then its failure to determine the application constitute unreasonable behaviour. He also considers that he would have been saved the expense of the first sequential test, which was out of date and unacceptable, if the Council had set out its detailed requirements at any early stage. The specific costs applied for are the planning application fees, the cost of the professional plans and the first sequential test.
4. The PPG advises that it is the applicant's responsibility to demonstrate compliance with the sequential test although, wherever possible, the Council is expected to support the applicant in undertaking it. In this case, there is little to suggest that the Council was aware that the applicant required support in preparing the first sequential test. Moreover, and as acknowledged by the applicant, the Council subsequently provided detailed and helpful advice to support the preparation of the revised sequential test. There is little compelling evidence that the Council behaved unreasonably in this regard.
5. The Council has explained the reasons for the delays and its failure to determine the planning application. These include the inadequacy of the first sequential test, the disruption to working as a result of the coronavirus pandemic, the departure of the original case officer and ultimately the

- unresolved parking issue. It states that, if it had determined the application, it would have refused permission on grounds relating to parking provision.
6. The applicant is understandably frustrated by the delay in determining the application and the disruption to his business, albeit he would have been disrupted for at least part of the time by coronavirus lockdown restrictions. However, as the Council would have refused permission, the appeal could not have been avoided. As can be seen from my appeal decision, I found conflict with the development plan and I dismissed the appeal accordingly. It therefore follows that the Council's failure to determine the application did not delay development which should clearly have been permitted.
 7. It has not been demonstrated that the Council behaved unreasonably or that this resulted in unnecessary or wasted expense in the appeal process. In any case, the PPG is clear that the costs must relate directly to the appeal. The award of costs cannot extend to costs incurred as part of the original planning application, nor to compensation for indirect losses such as may result from alleged delay in obtaining planning permission.

Conclusion

8. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. For this reason, an award of costs is not justified.

Sarah Manchester

INSPECTOR