
Costs Decision

Site visit made on 4 November 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2021

**Costs application in relation to Appeal Ref: APP/Z4310/W/21/3277369
IBS Building, 72 Waterloo Road, Bordered by Porter Street & Regent
Street, Liverpool L3 7BL**

- 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 David Copestake for a full award of costs against Liverpool City Council.
 - The appeal was against the refusal to grant prior approval to demolish the former IBS building.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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 contends that the Council acted unreasonably as it made statements in the reasons for refusal that have no relevance to the control it has in respect of prior approval details. Any rejection of a prior approval should be based on the submitted details alone, and not foray into matters of planning judgement. The Council acted erroneously in its efforts to prevent the loss of the building due to a concern for the impact on visual amenity, the World Heritage Site (WHS) buffer zone and the Ten Streets SRF. The Council also misunderstood the requirements with respect to any proposed restoration of the site, that there is no requirement to have a future redevelopment scheme in place and it could have sought further details in respect to the link bridge.
4. In response, the Council considers that although the World Heritage Site designation has now been revoked, the impact on the visual amenity of the area, which contains a number of listed buildings, is still a matter which is pertinent to the consideration of the application, given that it is intrinsically linked to the restoration of the site for which there are concerns as raised in the reason for refusal. It is reasonable of the Local Planning Authority to consider whether the proposed after treatment and restoration of the site is acceptable.
5. In this case, there is a link bridge that spans from the host building to the neighbouring property, 24 Vulcan Street/15 Porter Street, and is integrally linked to both properties. The submission does not consider how the bridge is

- to be removed, nor the visual impact on the neighbouring property as a result of its removal. It is entirely reasonable for the Local Planning Authority to consider the visual impact of this in the determination of the prior approval application
6. The prominent references by the Council to the WHS, the non-designated heritage asset, the SRF, to the retention of the building itself and to a future redevelopment scheme in its assessment and in its decision notice can be read as a straying into matters that do not fall within the remit of the relevant legislation relating to the prior approval for demolition. In that respect the Council is at best at risk of creating uncertainty as to which matters formed part of their determination of the application and at worst at risk of being deemed to have behaved unreasonably in considering matters that go beyond those outlined in the GDPO.
 7. However, I have set out in my decision letter that there is an absence of information provided with respect to the link bridge and how it would be safely retained. There is also uncertainty that this part of the site would be left in a visually acceptable condition. I have found that for this reason prior approval cannot be granted. The Council too was correct to consider the matter of the link bridge in its assessment of the application based on the information that was before it at the time and it clearly forms part of the reason for refusal set out on the decision notice. It did not therefore act unreasonably in refusing prior approval at least partly on this basis.
 8. The applicant submitted details relating to the proposed restoration of the site and accordingly these were before the Council for their consideration. There is no obligation, or reference made, within the legislation for the Council to seek further information beyond that submitted by the applicant. Indeed, the time period allowed for the Council's consideration of the notification does not afford any significant time period for discussion on such technical matters, in particular those which would likely to have been associated with the matter of the link bridge. Therefore, in both of these respects there was no unreasonable behaviour on the Council's part.
 9. In conclusion, the Council did not act unreasonably in refusing to grant prior approval due to the uncertainty in relation to the link bridge, by not requesting further details in relation to it or by its consideration of the proposed restoration of the site. The appeal could not have been avoided and the applicant has not incurred unnecessary or wasted expense in pursuing it. The other factors which may or may not have influenced the Council's overall determination are irrelevant in this context, and the application for costs must fail.

Graham Wraight

INSPECTOR