



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: 7 January 2022

**Costs application in relation to Appeal Ref: APP/Z4310/W/21/3277863
Crawford House, Royal British Legion, 161 Rose Lane, Mossley Hill,
Liverpool L18 5EA**

- 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 DJ McQueen for a full award of costs against Liverpool City 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 a HYBRID APPLICATION : (i) OUTLINE PLANNING APPLICATION : To erect 10 apartments, lay out 11 car parking spaces, erect bin and cycle stores, and lay out an associated internal access road, communal open space, means of enclosure and hard / soft landscaping, including a living green wall [all matters reserved]
(ii) FULL PLANNING APPLICATION : To carry out partial demolition to side of building and extend in connection with the creation of a new vehicular access to the side, convert the premises to 8 self contained apartments, lay out 6 parking spaces and an associated internal access road, communal open space, means of enclosure and hard / soft landscaping.
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Decision

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

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's submission has been made on both procedural and substantive grounds. With respect to the former, this is on the ground that the Council failed to determine the planning application within the time limits. In terms of the latter, this is on the basis that the Council has failed to address matters relating to the planning obligations it has requested. In both regards, this is in the context of there having been a recent appeal decision for a similar proposal and the findings of the previous Inspector therein.
4. In response, the Council states that the application was scheduled to go to Planning Committee in July 2021. The applicant however, in the knowledge that it was on the aforementioned agenda, chose to appeal against non-determination rather than await the decision of the committee a few days after making the appeal. There have been significant delays with all applications with the authority since May due to the introduction of a new IT system which took a number of weeks to become operational and which hindered the ability to

progress applications as well as staffing shortages and sickness. There was significant objection that needed dealing with and changes were still being required to be made to make the proposal acceptable.

5. The Council has not provided an explanation that justifies why the planning application was not determined within the time limit, or even in a period close to it. Whilst reference is made to some mitigating factors which I acknowledge, the proposal was a resubmission which reduced the number of dwellings proposed from the earlier planning application. It was a direct attempt to overcome the one reason that the previous Inspector found that the earlier appeal should be dismissed. The wider matters arising in respect to the proposal were therefore familiar to the Council and the one issue that was previously in contention was straightforward, in relation to overlooking.
6. Ultimately, the Council was able to advise that they would have approved the planning application had its powers to do so not been taken away. However, the application had been before them for a substantial period of time before the applicant exercised their right to appeal against non-determination, which they did before that avenue became closed to them. It cannot be considered to be unexpected in the circumstances that had prevailed that the applicant chose to exercise their right of appeal. The Council makes no reference to the matter relating to the planning obligations in its costs rebuttal, and therefore offers no defence or explanation in respect of that part of the costs claim.
7. The Council has acted unreasonably both in their failure to determine the planning application and because they have chosen not to address the findings of the previous Inspector with respect to the planning obligations or explain their position. Whilst the Council maintained that the obligations were needed, without any evidence or reasoning being provided to address the previous Inspector's findings on the planning obligations, it cannot have been expected that my own conclusions would have been different. This unreasonable behaviour has delayed development that should have been permitted. It has also resulted in an appeal that could have been avoided and meant that the applicant has incurred unnecessary and wasted expense in having to pursue it.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Liverpool City Council shall pay to Mr DJ McQueen, 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.
9. The applicant is now invited to submit to Liverpool 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.

Graham Wraight

INSPECTOR