
Costs Decision

Site visit made on 14 March 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25 March 2022

Costs application in relation to Appeal Ref: APP/Z4310/X/21/3285731 40 Rocastle Close, Liverpool L6 1PJ

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Rothschild of Rocastle Limited 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 certificate of lawful use or development for C3 - Dwellinghouse.
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Decision

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

Reasons

2. Paragraph: 048 Reference ID: 16-048-20140306 of the Planning Practice Guidance explains the circumstances in which costs may be awarded on procedural grounds. It advises that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
3. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.
4. I have received no reasons from the Council about why a decision was not reached within the relevant time limit.
5. I have, however, received an appeal statement from the Council setting out a number of matters that are essential to my findings on the appeal. Importantly, they have clarified the basis for the application, without which there was considerable ambiguity. The existing lawful use as a Class C3 dwellinghouse at the time of the application, about which I received no evidence from the appellant, was not demonstrated by the appellant but was confirmed to be the case by the Council.

6. The appellant made the bare assertion that no Article 4 Direction was in place at the time of the application. This was not demonstrated by the appellant to have been the case, for example by providing a constraints plan. Evidence of the position was supplied by the Council in the course of the appeal.
7. It is incumbent upon an applicant in such cases to specify fully, clearly and precisely what is being sought, and the applicant also bears the burden of proof to show that the use for which a certificate is sought would be lawful at the time of the application. Without the clarifications that have been offered by the Council in the course of the appeal I should not have been able to reach the conclusions on the substantive appeal that I have.
8. The Council does not defend the costs application. Whilst I agree with the appellants that the Council appears to have prompted an unnecessary appeal by its unexplained delays, I am not satisfied that this has caused the appellant any wasted expense, because the extensive ambiguities in the appellant's case and dearth of evidence to support it have been rectified not by the appellant but by the Council.
9. Therefore the application for an award of costs is refused.

Laura Renaudon

INSPECTOR