
Costs Decision

Site visit made on 22 March 2022 by Max Webb BA (Hons)

Decision by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 June 2022

Costs application in relation to Appeal Ref: APP/X5990/Z/22/3290552 3 Berkeley Street, London W1J 8NE

- 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 Crosstree Real Estate Partners LLP for a full award of costs against the City of Westminster Council.
 - The appeal was against the refusal to grant consent for the display of non-illuminated 8m (height) by 25m (wide) advertisement display affixed to the scaffolding set within a 1:1 façade replication building wrap for a period of 18 months.
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Decision

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

Procedure

2. An Appeal Planning Officer has set out the recommendation below, to which the Inspector has had regard before deciding the application.

Reasons

3. The Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, 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.
4. The Guidance advises that awards may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. All parties are expected to behave reasonably throughout the planning process, and costs can only be awarded in relation to unnecessary or wasted expense at the appeal.
5. The application for an award of costs and the response of the Council have been made in writing and will not be repeated here in any detail. The applicant considers the Council failed to assess the application correctly, including that Paragraph 202 of the National Planning Policy Framework (the Framework) was applied to an advertisement consent application. Undertaking a heritage test which was not relevant to an advertisement application may have led to the application being refused when it should not have been. The Council is considered to have behaved unreasonably, thereby necessitating the appeal.
6. The appeal decision explains the substantive reasons for dismissing the appeal. The Town and Country Planning (Control of Advertisement) (England) Regulations 2007 (as amended) sets out that powers under those Regulations shall be exercised in the interests of amenity and public safety, taking into

account the provisions of the development plan, so far as they are material, and any other relevant factors. With regard to amenity, the Guidance (para 079 Ref ID: 18b-079-20140306) advises that considerations of amenity of the general characteristics of a locality would include any feature of historic, architectural, cultural or similar interest. Reference is also made that such considerations can mean that advertisements could be refused if they would dominate a listed building. The location of the advertisement in a conservation area and near to a listed building would be relevant to the consideration of amenity.

7. The Council refused the application due to the harmful impact of the advertisement upon the conservation area and upon the setting of a listed building. Undertaking an assessment of the advertisement upon amenity would necessitate considering the characteristics of the locality, including the impact of the proposal upon heritage assets. Refusing the application on these grounds was in accordance with the requirements of the Regulations and the Guidance, and was not unreasonable behaviour of the Council.
8. In undertaking the assessment of the advertisement upon amenity the Council also applied the test in Paragraph 202 of the Framework. The application of this test is not relevant in advertisement cases as the policy only applies to heritage related consent regimes under the Planning (Listed Buildings and Conservation Areas) Act 1990. Nevertheless, undertaking the assessment did not alter the Council's reasons for refusal with regard to visual amenity. Consequently, the applicant would still have needed to submit the appeal based upon the Council's refusal of the application. I therefore do not consider the Council's actions to have resulted in unnecessary or wasted expense to the applicant in having to submit an appeal.

Conclusion

9. With the above in mind, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not been demonstrated. A claim for costs is thus not justified and accordingly it is hereby recommended that the application for costs be refused.

Max Webb

APPEAL PLANNING OFFICER

Inspector's Decision

10. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the application for an award of costs is refused.

J J Evans

INSPECTOR