Costs Decisions

Site visit made on 4 July 2022

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 July 2022

Costs application in relation to Appeal Ref: APP/X5990/Z/21/3289705
Burberry Ltd, 21-23 New Bond Street, LONDON, W1S 2RE

- The application is made under section 322 of the Town and Country Planning Act 1990, Regulation 17 of the Town and Country Planning (Control of Advertisements) Regulations 2007, and section 250(5) of the Local Government Act 1972.
- The application is made by Burberry for a full award of costs against the City of Westminster Council.
- The appeal was against the refusal of the Council to grant express consent for display of two non-illuminated adverts on the building wrap measuring 14.89m x 30.46m on the New Bond Street frontage and 14.89m x 29.06m on the Conduit Street frontage for a temporary period from the 1 January 2022 until 1 July 2023.

Decision

1. The applications for an award of costs are refused.

Reasons

2. Planning Practice Guidance 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. It indicates that all parties are expected to behave reasonably throughout the planning process. It also indicates that costs can only be awarded in relation to unnecessary or wasted costs at the appeal, although behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.

3. The basis for the applicant's application for costs is that in considering the Council applied the "heritage balance" as detailed in Paragraph 202 of the National Planning Policy Framework (the Framework). The appellant contends that this 'test' is not relevant in accordance with the Advertisement Regulations and that as such the Council has confused the process of determining Advertisement Consent applications with planning applications. It is alleged that as a result the procedure by which the application was refused was flawed and that had the correct procedure been followed the appeal may have been allowed. Accordingly, the appellant believes the local planning authority have acted unreasonably in refusing the application on substantive grounds.

4. The Council provided a delegated report which detailed the factors they took into account in determining the application. It concludes that:

"*It is considered that the large high level advertisement will have a detrimental impact on visual amenity, dominating this site and the street scene and causing harm to designated heritage assets. It brings no public benefits to outweigh this harm*".

5. The advertisement regulations are clear that decisions are to be made only in the interests of amenity and public safety. The Council therefore inappropriately applied the heritage test. However, it is evident that the Council were aware of the factors which apply to the consideration of advertisement applications as they refer within their delegated report to paragraph 132 of the Framework (now 136).

6. I have considered whether the delegated report was so unclear as to result in procedural unfairness which amounted to unreasonable behaviour from the Council leading to unnecessary or wasted expense on the part of the appellant. However, the Council's report very clearly identified harm in relation to amenity and I have no basis for concluding that in the absence of a heritage balance the Council would have reached a different view. This would also have been evident to the appellant.

7. The appellant didn't allege any public benefits[1] associated with the scheme, so in theory, the Council's report may have led the appellant to the view that if they had done so, permission may have been granted. However, as the appellant has identified, this approach would not have been appropriate for an advertisement proposal and I note that this is not the basis for the appeal submitted. Therefore, whilst the delegated report contained an error, this did not, in the event, lead to any procedural unfairness.

8. Furthermore, I have reached the same view as the Council in relation to the harm arising to visual amenity, including the impact on heritage assets. Accordingly, I find no unreasonable behaviour in respect of the substance of the matter and the merits of the case.

Conclusion

9. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, has not been demonstrated. Accordingly, the application for an award of costs is refused.

Anne Jordan

INSPECTOR

[1] It is common practice for applicants in advertisement appeals to refer to other material considerations, some which may, or may not relate to matters of public safety or visual amenity and which may be referred to as "public benefits". In this case the appellant did refer to the potential impact of an alternative treatment to the building during construction in the form of a building shroud. However, this was not presented as a "public benefit" but rather a consideration in relation to the visual impact of the scheme and I have interpreted it as such.