



Costs Decision

Site visit made on 31 August 2021 by Hilary Senior BA (Hons) MCD MRTPI

Decision by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Costs application in relation to APP/Z4310/D/22/3295852 158 Adelaide Road, Kensington, Liverpool, L7 8SH

- 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 T Mairs for a full award of costs against Liverpool City Council.
 - The appeal was against the refusal of planning permission for first floor rear extension to dwelling.
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Decision

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

Appeal 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 (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. Costs may be awarded to any party regardless of the outcome of the appeal.
4. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters, such as providing information that is shown to be manifestly untrue or inaccurate, or deliberately concealing relevant evidence. It also includes substantive matters, such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, or failure to provide evidence to substantiate the reasons for refusal.
5. The Applicant submits that a full award of costs is justified as it is suggested that the Council acted unreasonably in reaching its decision on the planning application by prejudging the application, relying on a superseded Supplementary Planning Document (SPG) and disregarding the Councils Building Conservation team (BCT) advice.

6. In respect of the alleged pre-judgement of the proposal, there is very little evidence to suggest that this was the case. Whilst the earlier correspondence between the council and the appellant included an incorrect reference to an additional bedroom, it is clear that the application was not ultimately determined on that basis.
7. Notwithstanding the appellants view in respect of the SPG the Councils decision and its reason for refusal is clear and the delegated report discusses the Councils view that the proposal conflicts with the Local Plan policies and the SPG. From the evidence before me the SPG has not been withdrawn and, for an interim period prior to its revision, the Council have authorised its continued use in determining planning applications.
8. In my view, the Council were entitled to consider the SPG as a material consideration in the determination of the application. However, the key aspect of this is how much weight should be attached to it, and that firmly falls within what must be considered as planning judgement. In that respect, the Council's use of the SPG was not unreasonable. In addition to the above, in my decision I did not find that the SPG was a determinative factor in relation to living conditions main issue.
9. Turning to the matter of the comments of the BCT, the Council clearly took that advice on board. However, the key difference between the main parties was whether the amendments suggested could be dealt with by means of planning conditions or whether amended plans were necessary.
10. In respect of the change of the external materials from a render to brickwork, in my decision I found that this would have gone beyond the scope of what a condition could be used for. In that sense, the Councils approach was the correct one to take given that no amended plans/details were submitted. In coming to that view, I acknowledge that in my decision such an amendment was not necessary. However, this is a matter of planning judgement.
11. That said, the Councils reasons for refusal also included the window design. This was on the basis of the suggested changes to type of window and the inclusion of an arched brickwork lintel detail and a masonry cill. To my mind, these aspects were necessary to make the development acceptable, but could have been controlled through the use of a suitably worded planning condition. Therefore, in this very limited aspect, the Council have acted unreasonably by including this element in their reason for refusal. This unreasonable behaviour has resulted in a small amount of additional work by the appellant in submitting the appeal and the costs application.

Recommendation and Conclusion

12. I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has been demonstrated in respect of the Council's inclusion of the window design as part of the second reason for refusal. Therefore, I recommend that a partial award of costs is justified in this respect only.

Costs Order

13. 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 T Mairs the partial costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of responding to window design; such costs to be assessed in the Senior Courts Costs Office if not agreed. 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.

Hilary Senior

APPEAL PLANNING OFFICER

Inspector's Decision

14. I have considered all submitted evidence and the Appeal Planning Officer's report and, on that basis, I agree that a partial award of costs is justified, and I make that award in the terms set out above.

Chris Forrett

INSPECTOR