



Costs Decision

Site visit made on 20 September 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2022

Costs application in relation to Appeal Ref: APP/Z4310/W/22/3300069 124 Breck Road, Anfield, Liverpool L4 2RD

- 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 R Kandiah 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 planning permission for the change of use of the ground floor from public house (sui generis) to retail convenience use (Use Class E), along with alterations to the premises' frontage.
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Decision

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

Reasons

Introduction

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance ("the 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. Paragraph 047¹ of the PPG sets out examples of unreasonable behaviour which may give rise to a procedural award of costs against a local planning authority, including a lack of co-operation with the other party or parties and failure to adhere to deadlines. Paragraph 048² states 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".
4. In respect of substantive matters, Paragraph 049³ of the PPG states that "local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning

¹ Reference ID: 16-047-20140306

² Reference ID: 16-048-20140306

³ Reference ID: 16-049-20140306

applications, or by unreasonably defending appeals". It goes on to give examples of such unreasonable behaviour, including "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".

5. There are both substantive and procedural elements to the applicants claim for an award of costs in this case.

Background and timeline

6. The original planning application was submitted in September 2021, and the applicant has provided a chain of e-mail correspondence with the Council between then and May 2022. On 22 November 2021 the applicant contacted the Council seeking to find out when the application would be determined; the parties exchanged further information on the same day.
7. On 25 November 2021, the case officer e-mailed the applicant stating that objections to the proposed development had been received from local ward councillors. The case officer sought further comments from the applicant and advised that, as a result of the objections from councillors, if the application were to be recommended for approval it would need to be considered by the Council's planning committee rather than being a delegated decision. No timescale for this was offered at this point.
8. The applicant e-mailed the case officer again on 8 and 20 December 2021, seeking a further update on progress. In response to the second of those e-mails, the case officer replied (on the same day) reiterating that the application would need to go to the planning committee and suggesting an extension of time to determine the application until 21 February 2022, in their hope that it would be taken to the committee on 8 February 2022. From the evidence before me the applicant's acceptance of this extended deadline seems to have been implied rather than explicitly stated.
9. On 12 January 2022 the applicant e-mailed the Council seeking confirmation of the date the application would be taken to planning committee. The case officer replied on the same day, stating that "the proposed change of use is acceptable in principle", but seeking further information on a number of matters. The case officer also commented that "The deadline for completion of reports for 9th February [sic] planning committee is this week so it will not be possible to hit this date". The applicant provided the requested additional information, including additional/amended drawings, on 24 January 2022.
10. The applicant sent two more e-mails seeking updates on the application on 1 and 8 February 2022. The case officer responded to the second of these indicating that the further information submitted was being reviewed, and that the next available planning committee dates would be 22 March and 12 April 2022. The applicant replied "noted" on the same day.
11. On 14 February 2022 the case officer e-mailed the applicant. That e-mail covered several matters; of greatest significance it noted that the Council had adopted a new Local Plan, within which Policy SP5 of the 2022 Liverpool Local Plan (which had been adopted in January) sought to protect existing community facilities. The case officer therefore requested that the applicant submit an additional "planning statement addressing the community value of

the public house”; the applicant e-mailed this to the case officer on 25 February 2022.

12. The applicant sent further e-mails to the case officer, expressing increasing frustration with the time taken to determine the planning application, on 23 March and 4 April 2022; the case officer responded to the second of these on the same day promising an update “within the next 2 weeks”.
13. On 10 May 2022 the applicant e-mailed again stating that “an appeal against non-determination is prepared and lodged”. The case officer responded on 12 May 2022 promising a response the same afternoon. The appeal form was submitted to the Planning Inspectorate on 30 May 2022.
14. As set out in paragraphs 4 and 5 of my main appeal decision, the Council did not submit an officer report (either in draft or final form) or an appeal statement to the Planning Inspectorate within the normal timescales. The substance of the Council’s case in the appeal was provided only on 3 October 2022, in response to a request from me which had been sent to the main parties on 28 September 2022.

Findings – the substantive claim

15. For the reasons set out in my main appeal decision, on the balance of the evidence before me I concluded that the proposed development would be acceptable, subject to conditions requiring the submission of certain further details, and the appeal was therefore allowed. However, that is not, in itself, an indication that the Council prevented or delayed development which should clearly have been permitted.
16. In reaching my conclusions on the proposed development, and in particular whether or not the use of the appeal site as a public house made it a valuable community facility, I considered four principal points which are set out in paragraphs 11 to 14 of the main appeal decision. These were the community’s use of (and its support, or lack thereof, for) the public house, the architectural quality of the building, its links with notable people or events in the area, and the availability of similar alternative facilities nearby. Having considered these matters, I found that it was not necessary to justify the proposed development against the criteria set out in Policy SP5. Although the Council had reached a different view, this involved matters of subjective judgement; its justifications for these were clearly set out and substantiated in its October 2022 appeal evidence, albeit in terms which I did not ultimately find persuasive.
17. I therefore find that, in respect of the substantive element of the applicant’s claim for an award of costs, the Council did not act unreasonably in the terms set out in the PPG.

Findings – the procedural claim

18. Turning to the procedural elements of the applicant’s claim, the Council’s response countered that:

“It is considered that the agent’s uncooperative approach to the application has contributed in a significant way to the delay. Rather than engage positively with the requests for appropriately detailed drawings and other information which would address the requirements of the Local Plan, the agent has sought to argue these requests are unreasonable. For example, providing detailed

drawings of the proposed alterations to the main façade has been described as 'impossible'."

19. None of the information before me suggests that the planning application raised particularly complex issues for the Council to assess, but even in relatively straightforward cases it is not at all unusual for a local planning authority to need to request further details from an applicant.
20. In this appeal, the evidence before me (including the e-mail chain which I have summarised, necessarily at some length, in the timeline above) is indicative of the applicant generally responding rapidly to the Council's requests for further information. Only one specific deadline appears to have been set by the Council (in its e-mail of 12 January), which the applicant met.
21. Nowhere in the e-mails does the applicant appear to suggest that any of the requests for information is unreasonable; although the word is used in the later appeal statements that does not support the Council's contention in respect of the determination of the planning application. Taking the word "impossible" as used by the applicant in its full and correct context, it is not a refusal to provide drawings or details which, in any event, had been supplied as requested. Instead, it is an assertion of the difficulty of accurately showing the detailed pilaster heads and other elements of the building's curved frontage on a two-dimensional drawing.
22. On the other hand, the same e-mail chain shows that the Council was in the habit of taking long periods to reply to the applicant's requests for information as to when the planning application might be determined. Responses were also often couched in general terms (such as on 8 February 2022, when the case officer e-mailed the applicant stating that they "acknowledge receipt of the amended drawings [which had been sent in more than two weeks earlier] and will revert back when these have been reviewed".
23. It is also evident that internal consultation within the Council was not taking place as quickly or effectively as it perhaps should have done. This appears to have contributed to delays, although these were not clearly communicated to the applicant. For example, a large part of the delay during and after February 2022 (and perhaps earlier) appears to relate to the adoption of the new Liverpool Local Plan in January 2022 and the Council's subsequent view that the proposal should be assessed against the requirements of Policy SP5. Local Plans are years in the making, and the new development plan adopted in January 2022 cannot have come out of the blue; there is nothing before me which explains why the need to consider the proposal against an emerging policy was not picked up earlier in the process. After the new development plan was adopted and the matter was picked up, the reasons for which the Council considered the proposal still conflicted with Policy SP5, and for which it would have refused planning permission even after the requested further statement was submitted, do not appear to have been communicated to the applicant between 25 February and 30 May 2022 when the appeal was lodged.
24. At the appeal stage, the Council did not clearly explain its reasons for not reaching a decision within the relevant time limit, nor why permission would not have been granted had the application been determined within the relevant period, within the standard timescales. This information was provided only in response to a request sent out from me, after the normal period for submitting an appeal statement had passed.

25. Taking all of these points together, it is clear that the Council's communication and case management in dealing with the planning application have fallen well short of what could reasonably be expected. The extended 21 February 2022 deadline for determining the planning application was agreed only after the applicant sought a progress update, and once that date had passed no clear further indication of when a decision might be made was offered, despite repeated requests by the applicant. The Council also did not adhere to the standard deadlines for providing information at the appeal stage. I consider that these actions amount to unreasonable behaviour, in the terms set out in Paragraphs 047 and 048 of the PPG, on the part of the Council. However, in order to make an award of costs I have also to be satisfied that this has resulted in unnecessary or wasted expense for the applicant.
26. The Council's actions in dealing with the planning application appear to have caused significant delay, and the failure to seek information earlier in respect of the emerging (and subsequently newly-adopted) Local Plan policy is particularly regrettable. However, all the evidence before me indicates that the Council would still have refused to grant planning permission for the proposal; as I have explained in paragraphs 15 to 17 above I do not consider that this would have been unreasonable, regardless of the fact that I allowed the appeal and granted planning permission for the development.
27. It is therefore not at all clear to me that events would have followed a different course if the Council had dealt with the planning application (and communication with the applicant) more effectively and efficiently. In my view the appeal would have been pursued in any case, and I cannot conclude that the Council's unreasonable behaviour in its handling of the planning application led to unnecessary or wasted expense for the applicant.
28. The Council's failure to submit an appeal statement within the standard timescale required me to request that they provide further information, including suggested conditions, at a later stage than would normally be expected. This came after the applicant had submitted the usual appeal statement and "final comments". It was an additional stage of work, which the applicant would not normally have expected to undertake, but which was required in the interests of natural justice. The Council's unreasonable behaviour in handling the appeal led directly to unnecessary expense for the applicant in preparing additional information to respond to the Council's late submission. A partial award of costs *relating only to this aspect of the appeal* is therefore justified.

Conclusion

29. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

30. 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 R Kandiah, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in responding to the Council's statement to the Planning Inspectorate

dated 3 October 2022; such costs to be assessed in the Senior Courts Costs Office if not agreed.

31. 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.

M Cryan

Inspector