



Costs Decision

Site visit made on 7 December 2021

by F Rafiq BSc (Hons) MCD MRTPI

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

Decision date: 23 November 2022

Costs application in relation to Appeal Ref: APP/Z4310/W/21/3280818 101-103 Bold Street, Liverpool L1 4HL

- 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 Zahar Albukai 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 office to two restaurants'.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. The type of behaviour that may give rise to an award of costs includes a lack of cooperation on the part of the local planning authority. Amongst other things, the National Planning Policy Framework (Framework) states that local planning authorities should approach decisions on proposed development in a positive and creative way.
3. The applicant has stated that the Council failed to determine the planning application within the statutory timescale and has referenced the request by the Council for a heritage statement. Although reference has been made to an email, I have not been provided with details of this request. The Council has also commented that the application was registered and validated within one day of submission and I have been provided with a letter¹ from the Council to the applicant's agent which confirms the application was validated on 24 May 2021. The Council has also provided an extract of the 'Local requirements – Liverpool Validation Checklist', which includes reference to a Heritage Statement, but this does not stipulate whether this statement² would be required for the appeal application. I note the various references by the applicant to legislation³ and to Paragraph 44 of the Framework in relation to the necessity of a heritage statement, but there is no clear evidence before me which demonstrates that such a request was made by the Council.

¹ Dated 1 June 2021

² The extract also references details of a Design and Access Statement but this was provided with the appeal application

³ The Town and Country Planning (Development Management Procedure) (England) Order 2015, The Town and Country Planning Act 1990 (as amended)

4. Rather, the Council has stated that it is the concerns on the new door opening which is the main area for disagreement. These concerns were communicated with the applicant's agent on 1 October 2021 who will have been aware of the Council's position. Although the delay in communicating this was regrettable and was after the target for determination, I am satisfied that the Council has provided a proper explanation for its failure to determine an application within the time frame (as required by PPG Paragraph 048⁴). Accordingly, I do not find the Council acted unreasonably in this regard.
5. The accompanying appeal decision sets out that the development includes the insertion of the doorway. Although the Council has enforcement powers to remedy planning breaches that are separate from the consideration of the appeal application, the Council submitted an appeal statement which explains how the development would be harmful and why permission would not have been granted had the application been determined within the relevant period. As such, an appeal would still have been necessary, and I do not consider that the applicant has incurred additional wasted expense as a result of the submission of the appeal.

Conclusion

6. With the above in mind, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is therefore not justified in this instance.

F Rafiq

INSPECTOR

⁴ Reference ID: 16-048-20140306