
Costs Decision

Site visit made on 23 February 2023

by R Morgan BSc (Hons) MCD MRTPI

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

Decision date: 13 March 2023

Costs application in relation to Appeal Ref: APP/Z4310/Z/22/3303623 270-272 Smithdown Road, Wavertree, LIVERPOOL, L15 5AH

- 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 D. Goldsmith of INM Properties for a full award of costs against Liverpool City Council.
 - The appeal was against the refusal to grant express consent for the display of an LED Outdoor Digital Sign.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. In this case, the applicant has suggested that several mistakes in the Council's delegated report have contributed to an incorrect decision being made. As a result, the applicant considers that the reasons for refusal do not stand up to scrutiny, and have resulted in an unnecessary appeal.
4. The Council has accepted that, in its delegated report, it incorrectly identified the appeal site as falling within a Local Centre, rather than a District Centre, as defined in Liverpool Local Plan Policy SP1. In the applicant's view, this error led to the commercial function of the area being downplayed in the Council's decision.
5. I acknowledge that District Centres are likely to contain a wider range of shops and other commercial uses than Local Centres. However, that does not necessarily imply that such centres will automatically provide appropriate locations for advertisements of the type provided. Indeed, Policy SP1 is silent on the matter of advertisements, and its applicability to the appeal proposal is limited. Instead, a case-by-case assessment is required which takes account of the particular circumstances of the area. The Council found that the proposed advertisement display would result in a highly conspicuous and obtrusive feature in relation to the streetscene, a conclusion which I agree with.
6. The applicant has also asserted that the Council did not correctly take account of the meaning of amenity, as set out in the relevant guidance, and that

disproportionate weight was afforded to residential amenity. Amenity is not specifically defined in the legislation, but the PPG advises that it is usually understood to mean the effect on visual and aural amenity in the immediate neighbourhood, where residents or passers-by will be aware of the advertisement (Paragraph 079).

7. In its officer report, the Council considered the effect of the proposal on the character of Nicander Road, as well as that of Smithdown Road. Given the location of the appeal site, facing onto the end of this traditional residential street, such an analysis was entirely appropriate. Without it, the Council's assessment of the proposal on the visual amenity of the immediately surrounding area would have been incomplete. The Council's analysis relates to the effect of the proposal on the streetscene, rather than on the living conditions of nearby residents. As such, I find no evidence of unreasonable behaviour in relation to this matter.
8. The applicant has also highlighted the Council's failure to properly take account of the fall-back position. I agree that the Council has been inconsistent in its approach to the existing sign. Having confirmed that the existing sign does have deemed consent, the Council has then gone on to consider whether, in principle, a large format sign in this location would accord with Local Plan Policy UD9.
9. The Council's delegated report could be clearer, and does contain errors. Notwithstanding that, for the reasons set out in the appeal decision, I agree with the Council's overall conclusion that the proposed digital sign would cause harm to the visual amenity of the area. The decision that the Council came to was justified, and did not result in an unnecessary appeal.
10. In light of the above considerations, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, an award of costs is not justified and the application for costs is refused.

R Morgan

INSPECTOR