



Costs Decision

Site visit made on 14 February 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Costs application in relation to Appeal Ref: APP/Z4310/W/22/3306489 234 Menlove Avenue, Mossley Hill, Liverpool L18 3JF

- 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 Chris Convery for a full award of costs against Liverpool City Council.
 - The appeal was against the refusal of planning permission for a detached dwellinghouse in rear garden following demolition of existing swimming pool structure, install outdoor swimming pool, partially demolish side of 234 Menlove Avenue to create new vehicular access to rear.
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Decision

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

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Reason 2 in the Council's Decision Notice failed to detail any identified harm arising from the proposed development. It only referenced a lack of information which the Council considered necessary to fully assess the proposal. Accordingly, it lacked the clarity and precision required by Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to sufficiently explain the Council's concern in relation to the effects of the development proposal.
4. Whilst the Council asserts that this information requirement was highlighted in discussions prior to the submission of the application, if that was the case, it could have withheld validation or properly requested it early within the statutory period to ensure adequate information was available. This would facilitate a formal determination against the policy requirements.
5. Although I agree that the information provided was limited and would be difficult for third parties to interpret, particularly in relation to ground level changes, the Council's subsequent inability to qualify the impact of the proposal has resulted in a vague assessment of its effects. This was particularly so in relation to the living conditions of neighbouring residents.

6. I note the Council considered this to be one of a number of concerns such that little difference to the outcome would have arisen. However, had it sought the relevant information, it would have been able to fully assess matters raised by a number of third parties and narrowed the subject of the appeal. I find its approach in this regard was unreasonable and has caused some additional costs to the applicant in the appeal.
7. The applicant's concerns in relation to the Council not relaying information arising during the processing of the application, including in relation to protected species and trees, is regretful. However, it is not necessarily for the Council to drip-feed consultation correspondence to an applicant. The online publication of documentation allows applicants to track their own applications.
8. In the context of dealing with an application submitted during a Covid-19 lockdown period, I find any expectation to continually update on all pertinent matters would be unduly burdensome and counterproductive. It would not be a realistic proposition for the Council. This is particularly so in instances where the pre-application procedures advocated by Section 4 the National Planning Policy Framework have not been utilised.
9. Whilst it is unfortunate that some matters of concern were not raised in the Council's responses, particularly as it had not justified the extension period for determination of the application, and some responses to the applicant's correspondence from the Council were delayed, I cannot find it amounts to unreasonable behaviour in the case circumstances.
10. An ecological assessment, dated April 2018, was submitted close to the limit of its timeframe for validity. This was highlighted by the response of the Council's ecological advisor within the statutory determination period. Whilst this could have been highlighted by the Council, it is equally for the applicant to ensure supporting documentation is up to date. Notwithstanding the delay in decision-making, as Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a duty on decision makers to have regard to the likelihood of European Protected Species being present and affected by the proposed development, the Council was therefore bound to determine the case on the information before it.
11. In instances where Councils have identified other reasons to refuse an application for planning permission, it is not uncommon that additional or updated information is not requested where this would require outside specialist input. In itself, this could draw complaint when a Council has determined to refuse the application on other grounds. Unlike a request for clarifying plans from an agent, this could impose a significant financial burden on the applicant or further delay in determination – particularly when protected species surveys are seasonal. Accordingly, I cannot conclude that this approach amounted to unreasonable behaviour on the part of the Council.
12. The applicant referred to a number of other cases elsewhere which it claims the Council have considered in an inconsistent manner to the appeal case. However, in the absence of comprehensive details of those proposals and their associated assessments, I am unable to conclude that any unreasonable behaviour has occurred in respect of consistent decision making. Furthermore, some site differences were explained in correspondence from the Council's officer.

13. I note the applicant's criticism that the Council did not specify what scale of development on the site would be acceptable. However, it is not necessary for a Council to be overly prescriptive on individual developments. This could prejudice some or all parties in the determination of a future application.
14. In relation to the driveway and potential effect on a street tree, there was conflicting information provided by the applicant on the matter. Again, although it would have been prudent for the Council to clarify the issue, I cannot find its conclusion, based on the worst-case scenario, to be tantamount to unreasonable behaviour.
15. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part. Accordingly, and having regard to all other matters raised, a partial award for costs is therefore justified.

Costs Order

16. 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 Chris Convery the costs of the appeal proceedings described in the heading of this decision in relation to the matter of the Council's second reason for refusal only.
17. The applicant is now invited to submit to the 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.

R Hitchcock

INSPECTOR