



Costs Decision

Site visit made on 26 April 2023

by Debbie Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 05 May 2023

Costs applications in relation to Appeals Ref A: APP/Z4310/Y/22/3301964 and B: APP/Z4310/W/22/3301952 The Orangery, Knoll Park, Liverpool

- Application A is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - Application B 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 applications are made by Mr Anthony Kong of the Leo Property Group for a full award of costs against Liverpool City Council.
 - The appeals were against the failure of the Council to issue a notice of their decision within the prescribed period on applications for listed building consent and planning permission for "re-construction and extension of the Orangery building to form a single storey, detached house".
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Decision

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

Reasons

2. 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.
3. The appellant submits that the Council has been unreasonable and has caused them to incur significant costs in preparing and submitting the appeal against the non-determination of the applications. It is argued the appeal would not have been necessary if the Council had carried out its statutory functions correctly.
4. The PPG advises that a local planning authority is at risk of an award of costs through a lack of cooperation with the other party, or a delay in providing information or other failure to adhere to deadlines. The guidance continues (para 048) 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."
5. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and

better communication with the applicant would have enabled the appeal to be avoided altogether”.

6. The PPG advises that the Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances (para 046).
7. The Council explains the delay was due to the need to obtain specialist comments. However, the appellant submitted the application with relevant supporting plans and information. There is no evidence that the application was incomplete or lacking in some way or that the appellant caused or added to the failure to determine the application. I appreciate that the proposal related to a sensitive site in that there is an 'area' Tree Preservation Order and heritage assets in the vicinity. However, the scheme was relatively small scale and the relevant planning issues were not unusual or overly complex. Heritage and tree related matters are not uncommon, and I can find no justified reason within the Council's response to the costs application that accounts for the delay nor the lack of communication with the appellant.
8. I find that there are no extenuating circumstances which impacted on the Council's ability to process applications properly, and in a timely manner.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972, Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 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 Anthony Kong of the Leo Property Group, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

Debbie Moore

Inspector