



Costs Decision

Site visit made on 6 June 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2024

Costs application in relation to Appeal Ref: APP/T4210/W/24/3340182 10 Union Street and 40 The Rock, Bury, BL9 0NY

- 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 Sid Sethi (Specscart Limited) for a full award of costs against Bury Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for modifications to existing window openings.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 application is for a full award of costs. It is argued that in various ways the Council did not assess the proposal correctly and it has not properly substantiated the reason for refusal. As a result, the appellant considers that the need to make the appeal represents a wasted expense.
4. The application had a single reason for refusal which relates to the impact the proposal would have on the character and appearance of the conservation area. The reason for refusal sets out both the development plan policies and the paragraphs within the National Planning Policy Framework (the Framework) to which the Council considered the scheme would be contrary. It is therefore clear that in determining the application the Council have had regard to the Framework as well as the development plan.
5. Whilst the Council have not provided an appeal statement, they have stated that this is because they consider the delegated report for the application adequately sets out their reasoning for refusing the application. Within the delegated report whether or not the development plan policies are consistent with the Framework is assessed. The planning history section also sets out the Lawful Development Certificate for No 10, so I am satisfied that, as far as this is relevant, it was taken into account in the determination of the application.
6. The delegated report describes the significance of the buildings and how they contribute to the character and appearance of the conservation area. It clearly sets out why they consider the proposal would cause harm to both the non-designated and designated heritage assets. For example, it indicates that the proposal would cause visual harm to the architectural proportions of the

- buildings, and cause disharmony to the visual rhythm of the fenestration on the two elevations of No 40.
7. In addition, whilst not required in the development plan policies, in accordance with the requirements of the Framework, the report identifies the level of harm to the conservation area and balances this against the public benefits. It identifies that whilst there is a public benefit from the provision of an opticians, this benefit already exists through the current use of No 10 and so would not be a benefit arising from this proposal.
 8. However, there is nothing in the delegated report, either in the heritage balance or elsewhere, that ascribes adverse weight because No 10 is already operating as an opticians or that suggests No 40 should be protected for non-retail uses. Any suggestions with regard to the latter expressed in discussions between the appellant and the Council after the application was determined are the informal views of the Officer and do not represent the formal decision of the Council. It is the formal decision that gave rise to the necessity for the appeal.
 9. As set out in my decision, given that the appeal scheme is for modifications to various existing window openings, not a change of use for a retail proposal, the retail and town centre policies in the development plan are not directly relevant. As a result, I am satisfied that the Council have identified the relevant policies and assessed the proposal against them appropriately.
 10. Whilst the delegated report indicates that the Council considered that restorative works to the building in respect of the cash machine and night safe would not materially affect the external appearance of the building, the scope of the appeal scheme goes far beyond restorative works. As a result, it is reasonable for the Council to consider that the appeal scheme does unacceptably harm the appearance of the building.
 11. The delegated report does not specifically mention that the appeal site lies on the edge of the conservation area, although it does indicate that it adjoins the more modern Millgate shopping centre. Nonetheless, it is indicated that the Officer undertook a site visit and from this they would have been aware of the wider surroundings. As outlined above, the report sets out substantive reasoning for why the Council consider the proposal, in this location, would harm the character and appearance of the conservation area. Whilst the appellant may not agree with the Council's reasoning and conclusion, this does not mean they have behaved unreasonably.
 12. Overall, I consider that the Council has provided substantive reasoning for its decision to refuse the application. I am also satisfied that the Council has met its obligation to give proper consideration to the planning application.
 13. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and thus an award of costs is not justified.

Alison Partington

INSPECTOR