Planning Inspectorate

Costs Decision

Site visit made on 24 February 2025

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 April 2025

Costs application in relation to Appeal A Ref: APP/B4215/C/24/3338017
Land at 68 - 70 Market Street, Manchester M1 1PW

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Manchester City Council for a full award of costs against H&M Hennes & Mauritz UK Limited.
- The appeal was against an enforcement notice alleging, without planning permission, alterations to the Market Street elevation by the installation of a fascia panel

Decision

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

Procedural matters

2. The Planning Practice Guidance (PPG) advises that applications for costs should be made as soon as possible and, for appeals following the written representations procedure, no later than the final comments stage. In this case, the initial deadline for final comments was 13 June 2024. The application for costs was received on 17 June 2024.

3. However, the deadline for the receipt of final comments was extended to 18 June 2024. Both parties were informed of this deadline in correspondence dated 28 May 2024. Accordingly, I am satisfied that the application for costs was made within the deadline and so it can be accepted.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the 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.

5. The PPG states that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.

6. The Local Planning Authority (LPA) asserts that the appellant has acted unreasonably in pursuing the ground (f) appeal because they could not rely on a former grant of planning permission as a 'lesser step' to achieve the purposes of the notice. Instead, it is of the view that, in the absence of an appeal on ground (a), the appellant's submission goes beyond the scope of a ground (f) appeal because planning permission would be required. It suggests that it should have been obvious that the ground (f) appeal would fail, and it advised the appellant of this in correspondence before the appeal was submitted.

7. In response, the appellant states that it was not unreasonable for them to view the last grant of planning permission[1] (the 2012 permission) as a lawful and legitimate position to revert to as a lesser step to achieve the purposes of the notice. They argue that the requirements of the notice would in effect revert to a form of development that was approved in 1999 and that this is unreasonable.

8. It can be seen from my decision that I have found in the LPA's favour on this issue and dismissed the ground (f) appeal. The appellant does not dispute that that the 2012 permission was implemented and completed. Their evidence also acknowledges that this development was followed by at least three separate unauthorised alterations to the shopfront between 2016 and 2023.

9. It should have been apparent to the appellant, particularly as they are professionally advised, that the 2012 permission was spent and extinguished, and, therefore, could not be resurrected without a further grant of planning permission. If it were otherwise, such a planning permission would be indefinitely valid, and would resemble an 'unexploded bomb', liable to go off at any time when the owner chooses to revert to the development for which permission was previous given, despite this having been interrupted by other forms of development. That would be absurd.

10. Given the circumstances, and based on the appellant's own evidence, it was not a matter of judgement as to whether the 2012 permission had been spent or not. I note the appellant's reference to relevant judicial authority on this matter, however, their interpretation of the caselaw is seriously flawed.

11. Accordingly, on this basis, the appeal on ground (f) had no realistic prospect of success. Therefore, in pursuing the appeal, the appellant has behaved unreasonably. As a direct result, the LPA has been faced with the unnecessary expense of defending the appeal.

Conclusion

12. I have found 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

13. 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 H&M Hennes & Mauritz UK Limited shall pay to Manchester City Council, 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.

14. The applicant is now invited to submit to H&M Hennes & Mauritz UK Limited, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J M Tweddle

INSPECTOR

[1] Planning Permission Ref. 097769/FO/2011/C1