



Costs Decision

Site visit made on 19 December 2024

by **J Smith MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 May 2025

Costs application in relation to Appeal Ref: APP/Z4310/W/24/3349514 Former Warbreck Public House, 94 Orrell Lane, Liverpool L9 8BN

- 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 Mrs Natalie Porter of Denstone Properties NW Ltd for a full award of costs against Liverpool City Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application to part demolish, convert and extend the existing building to create 6 x 2-bedroom apartments and 9 x 1 bedroom apartments; and to erect 5 terraced dwellinghouses (1 of which 2 bedrooms; 4 of which 3 bedrooms), with access via both Orrell Lane and Bull Lane, and associated car parking, garden areas, bin and cycle stores, and hard and soft landscaping.

Decision

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

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 PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters, such as providing information that is shown to be manifestly untrue or inaccurate, or deliberately concealing relevant evidence. It also includes substantive matters, such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, or failure to provide evidence to substantiate the reasons for refusal.
4. The application for costs relates to the allegation that the Council has not cooperated which has prevented and delayed a development which should have been permitted, having regard to its accordance with policy and other material considerations and the requirement of the appellant to enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework (the Framework).
5. The history of the application since its submission up until February 2023 can only be described as 'chequered'. This is due to the changeover in both Council case officers and planning agents working on behalf of the appellant. The current agent notes that they cannot vouch for that period of history and suggest that it has been superseded and is largely irrelevant. This is due to the changes made to the scheme and information provided since the engagement of the current agent in this

application. As such, I have focused on the alleged behaviour of the Council since the appointment of the current planning agent.

6. The case officer in the position of deciding the application in 2024 notes that the application was intended to be refused after their identification of several issues, with regard to the loss of a community facility, amongst other items. Although a letter was provided to the Council approximately 11 months prior, the Council had not found any concern with this matter, until the appointment of the current case officer.
7. Whilst I understand the grievances by the appellant in relation to the time taken to reach this point, my reading and understanding of the evidence before me suggests that the planning officer which took stewardship of this application worked to alert the appellant to the relevant planning matters. Whilst some of these matters may have been introduced later than would be desirable, these are matters which would need to be resolved in order to comply with local planning policy. This includes matters relating to the loss of a community facility, design, affordable housing and other items.
8. In May 2024, the Council set out to the appellant that due to an absence of evidence, it would refuse the application on the principle of the loss of a community facility, amongst other matters relating to amenity, affordable housing and trees. As such, the Council saw it beneficial that an extension of time be agreed to address these latter matters, and the application be refused on its principle which could be appealed.
9. Yet, after the matters relating to amenity, affordable housing and trees appeared to have been addressed, the evidence suggests that no response, including that as a decision to refuse the application, was not provided. This period is significant, and I cannot see a reason why the application was not decided, albeit with a refused decision. This is a considerable delay. As such, on balance when taking all of the evidence of this matter into account, I find that in the latter stages of the application in 2024, the Council did indeed fail to make a decision, before the appeal was lodged for non-determination. As such, I consider this behaviour to be unreasonable.
10. Nevertheless, as the Council did alert the appellant that they would refuse the application on its principle, the appellant would have been prepared to appeal the decision. In my assessment of the principle of this case, I am of the view that there is an element of planning judgment as to what evidence must be provided in relation to this issue when assessed against the relevant local plan policy. As such, it does not immediately follow that costs should be awarded for the preparation of the appeal case. Therefore, I have factored this matter into my decision in this award of costs.
11. I now turn to the matter of the planning obligation. In my assessment of the requested planning obligations in the main decision, I conclude that the requested contributions for off-site open space provision and off-site tree planting would not comply with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and Paragraph 58 of the Framework. Therefore, in following the guidance set out in the PPG on Cost Awards, the suggestion that the appellant should enter into a planning obligation which, in relation to these matters, would not accord with the law or the Framework, would amount to unreasonable behaviour.

12. I therefore find that the Council has demonstrated unreasonable behaviour. This is due to their failure to determine the application and in their request for obligations which would not accord with the law in relation to off-site open space provision and off-site tree planting. This has resulted in unnecessary and wasted expense on the part of the applicant.

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 Liverpool City Council shall pay to Mrs Natalie Porter of Denstone Properties NW Ltd the following costs:
- the costs incurred for the time billable since the submission of the letter dated 31st May 2024 by the appellant, to the point at which they filed an appeal for non-determination; and,
 - the time and work billable which was spent in drafting the Unilateral Undertaking with specific regard to the matters relating to off-site open space provision and off-site tree planting.
14. The applicant is now invited to submit to Liverpool City Council, who have also been sent a copy of this decision, details of those costs with a view to reaching agreement as to the amount. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Office is enclosed.

J Smith

INSPECTOR