



Costs Decision

Site visit made on 16 May 2025

by **J D Westbrook BSc(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 May 2025

Costs application in relation to Appeal Ref: APP/Z4310/W/25/3359669 15-21 Lark Lane, Liverpool, L17 8UW

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Brian McAnoy for a partial award of costs against Liverpool City Council.
 - The appeal was against the refusal of planning permission for a change of use of the upper floors to an 8-bed aparthotel (Use class C1), including a second-floor extension to the rear; alterations of windows and doors to the rear, and removal of fire escapes.
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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 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 proposal involves the change of use of two upper floors above a restaurant into an 8 roomed aparthotel on Lark Lane. Lark Lane is a busy commercial centre and lies within the Lark Lane Conservation Area. The planning application was refused on several grounds including the nature and functioning of Lark Lane as a commercial area; harm to the living conditions of the occupiers of nearby residential properties by way of noise and disturbance; and unsatisfactory provision for the operation of waste disposal facilities at and around the property. The appellant contends that the Council has acted unreasonably with regard to these issues.
4. With regard to the nature and functioning of the commercial centre, the Council contended that Lark Lane did not meet the criteria for being considered as a Neighbourhood Centre. Policy SP1 of the Council's Local Plan (LP), adopted in January 2022, indicates that Neighbourhood Centres consist of small clusters or parades of shops containing at least 5 units which serve their immediate catchment area for local convenience retailing, and it is important to protect their role in providing local neighbourhood shops and services. Lark Lane has 3 convenience stores which between them occupy 4 shop units. There is, therefore, reasonable grounds for considering that Lark Lane does not meet the criteria for a Neighbourhood Centre.
5. However, Lark Lane also contains a large number of restaurants, cafes, coffee shops and small independent stores and services. Furthermore, the appellant has provided information regarding 4 recent decisions made by the Council relating to properties along Lark Lane where the area has been described in officers' reports

as a Neighbourhood Centre. These decisions all date from the period since the current LP was adopted. I find, on this basis, that the Council has been inconsistent in its decision-making on planning applications relating to properties along the same road. The Council argues that the site does not lie within a 'designated centre' and questions whether Lark Lane meets the criteria for a non-designated Neighbourhood Centre, but there would not appear to be any reasons given by the Council explaining the inconsistency in approach when compared with officer's reports on previous applications along the road. I consider this to be unreasonable.

6. With regard to the impact of the proposal on the living conditions of the occupiers of nearby residential properties, the appellant contends that the Council has acted unreasonably because it actively encourages main Town Centre uses in Lark Lane. However, Policy SP2 of the LP indicates that proposals for town centre uses within Neighbourhood Centres will only be permitted subject to certain criteria being met. These include that residential amenity is not adversely affected.
7. I acknowledge that the entrance to the aparthotel would be from the commercial street itself and that few residential properties would be directly affected. However there would also be the potential for noise and disturbance at the rear of the property, where there are a number of nearby dwellings. The appellant has contended that such disturbance could be controlled by condition but, given the information shown on the submitted plans, I do not consider that such control could be effectively enforced, and the Council has contended the same point in its statement of case, where it notes that Lark Lane is situated in a Primarily Residential Area, and states that 'outdoor noise and disturbance from comings and goings is not as easily controlled'. In addition, the Council notes in its costs rebuttal statement that the impact to the other residential properties identified in the Officer's Report, including the flats to the rear of the appeal site, would be from outdoor noise and disturbance. In this instance, I do not consider that the Council has acted unreasonably.
8. With regard to waste disposal facilities, the appellant contends that the proposed waste disposal storage would be inside the site and would not obstruct the rear service alley; that it would not be visible from outside the site; and that it meets the requirements of the Council's Environmental Health Department. On this basis, the Council's continued objection to the proposal is considered unreasonable.
9. However, from the information provided with the proposed scheme, it would appear that waste bins large enough to meet requirements would not be able to fit through the rear storage area doors and that the rearmost bin could not be conveniently accessed. If smaller bins were used, it is not clear that they would be capable of meeting demand. Furthermore, the only internal access to the storage area would be through the restaurant preparation area. In the absence of any details of management of the aparthotel, it would seem reasonable to consider that the use of the waste disposal facilities proposed would be at best highly inconvenient. In addition, if the restaurant and aparthotel businesses became separated, which is something that the appellants cannot guarantee would not happen, the facilities could become unusable, or could be accessed only from the alleyway outside.
10. In the light of the uncertainties surrounding the waste storage facilities proposed, I consider that the Council was not acting unreasonably in using the issue as one of the reasons for refusing the application, as outlined in its Officer's Report, and repeated in its appeal statement of case.

11. In conclusion, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. 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 Brian McAnoy, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred with regard to inconsistency by the Council in its consideration of what constitutes a Neighbourhood Centre, such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. 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.

J D Westbrook

INSPECTOR