

Costs Decision

Site visit made on 6 September 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3rd October 2016

**Costs application in relation to Appeal Ref: APP/A4710/W/16/3153098
Inglewood, 116 Green Lane, Greetland, Halifax HX4 8BL**

- 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 Brian Vincent (B & H Vincent LLP) for a full award of costs against Calderdale Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the change of use from care home (C2) to House in Multiple Occupation (No. 30) (Sui Generis).
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Decision

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

Reasons

2. 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. The PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal.
 3. The basis of the appellant's application for costs is on the grounds that the Council acted unreasonably during the consideration of the planning application by Planning Committee (Committee) and which resulted in the decision to refuse planning permission being contrary to the recommendation of officers. The appellant contends that, as a consequence of the unreasonable behaviour of the Committee and a lack of any evidence on which to substantiate the reasons for refusal, an appeal was necessary.
 4. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
 5. I consider that the reason for the refusal of the planning application was relevant to the application and clearly states the relevant policy of the Replacement Calderdale Unitary Development Plan (amended 2009) (RCUDP) that the proposed development would be in conflict with.
 6. Policy H16 (i.c.) of the RCUDP clearly states that planning permission will be granted for the use of a building as a house in multiple occupation (HMO) where there would be no harm to the occupiers of neighbouring buildings. In
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this case, the Council referred to several appeal decisions elsewhere in the country where the potential for noise and disturbance arising from the occupation of a HMO were considered.

7. It is clear from this evidence that the consideration of such matters in those appeal decisions is subjective and dependant on several factors including, but not exhaustive, the residential character of the area, the number of occupants in the HMO, the location of the property and the cumulative effect of HMO's. As a consequence there are understandably variations in the decisions of the appeals referred to and little reference to technical evidence.
8. In my view, given the number of objections to the proposal received from local residents and the location of a proposed 30 bedroom HMO to existing residential properties, the Committee were quite entitled to consider the effect of the proposed change of use on the living conditions of the occupants of nearby buildings in the context of Policy H16 (i.c.). HMO's do have the potential to generate noise and disturbance although not necessarily of an extent to cause demonstrable harm to the occupants of nearby properties in all cases.
9. Although I found that the relative containment of the appeal property and its separation from other properties would be contributory factors in arriving at my view that the proposal would not cause demonstrable harm to the living conditions of the occupants of nearby properties, this does not imply that the Committee acted unreasonably in arriving at its conclusion.
10. Consequently, I do not consider that the Council acted unreasonably in their consideration of this matter at Committee. The views of the Committee were adequately substantiated in the Decision Notice, were relevant to policies in the development plan and substantiated in the evidence provided in the appeal with particular reference to several appeal decisions.
11. Taking all of these matters into account, I find that the reason for the refusal of the planning application was complete, precise, specific and relevant to the application. I have found that the Council had reasonable concerns about the impact of the proposed development which led to the decision to refuse the application. Just because I have found differently from the Council this does not mean to say that the Committee's concerns had no basis. Accordingly, I do not find that the Council failed to properly consider the merits of the scheme and therefore the appeal could not have been avoided.
12. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified.

Stephen Normington

INSPECTOR