

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/16/3152991
Stafford Manor Care Home, 1 Stafford Avenue, Halifax, Calderdale
HX3 0NR**

- 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 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 a large house in multiple occupancy (Sui Generis).
-

Decision

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

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. The reasons for the refusal of the planning application are relevant to the application and clearly states the policies of the Replacement Calderdale Unitary Development Plan (amended 2009) (RCUDP) that the proposed development would be in conflict with.
-

6. With regard to the Council's first reason for refusal, Policy H16 (i.c.) of the RCUDP clear 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 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 the evidence referred to 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 cumulative effect of HMO's and the location of the property. As a consequence there are understandably variations in the decisions of the appeals referred to by both parties and little reference to technical evidence.
8. In my view, given the relatively quiet residential character of Stafford Avenue and that a 22 bedroom HMO was proposed, 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 to some extent. 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
9. 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.
10. Taking all of these matters into account, I find that the first reason for the refusal of the planning application, as set out in the Decision Notice, 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, with regard to the Council's first reason for refusal, 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.
11. Turning to the second reason for refusal, Policy BE2 of the RCUDP requires, amongst other things, the provision of adequate privacy, daylighting and private amenity space for prospective residents of the building. The appeal property was formerly used as a care home and the majority of the bedrooms would be unchanged in the proposed change of use scheme with many of the kitchen, dining and lounge areas being retained. At my site inspection I found that there was wide variation in bedroom sizes but all had an acceptable outlook and received adequate daylight.
12. I have no evidence to suggest that Members of the Committee undertook an internal inspection of the property and no reference is made to any adopted internal space standards. The applicant suggests that all of the bedrooms

would meet the licensing requirements for HMO's. The Council's statement of case does not specifically identify or substantiate why the proposal would be in conflict with Policy BE2 and in particular where or how privacy, private amenity space or daylighting may be inadequate in the context of the policy.

13. In this context, little evidence has been provided by the Council to support the second reason for refusal and the specific harm to the occupants of the proposed HMO has not been identified. Taking these factors into account, I can see no reasonable justification for the Committee's second reason for refusal.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated with regard to the second reason for refusal and that a partial award of costs is justified.

Conclusion

15. The Council's reason for refusing planning permission, as set out in its Decision Notice, consists of two distinct elements: the finding that the proposed change of use would harm the living conditions of the occupants of neighbouring buildings by reason of noise and disturbance which would conflict with Policy H16 (i.c.) of the RCUDP, and that the internal layout of the bedrooms and lack of adequate facilities and amenity space would fail to provide an acceptable standard of residential amenity for future residents which would conflict with Policy BE2 of the RCUDP. I have found that the Council behaved unreasonably in reaching its decision on the second reason for the refusal of planning permission, but not the first.
16. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the second of the Council's reasons for refusal is justified.

Costs Order

17. 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 Calderdale Metropolitan Borough Council shall pay Mr Brian Vincent the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second of the Council's reasons for refusal, which concerned alleged conflict with Policy BE2 of the RCUDP.
18. The applicant is now invited to submit to the 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. In the event that parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stephen Normington

INSPECTOR