
Costs Decision

Site visit made on 21 April 2017

by Matthew Birkinshaw BA(Hons) Msc MRTPI

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

Decision date: 17th May 2017

Costs application in relation to Appeal Ref: APP/M4320/W/17/3167226 Land to rear of The Lifeboat Public House, 41A Three Tuns Lane, Formby, L37 4AQ

- 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 J D Wetherspoon PLC for a full award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for residential development comprising 9no. apartments – land to rear of The Lifeboat P.H, Three Tuns Lane, Formby.
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Decision

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

Reasons

2. The National Planning Practice Guidance states that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
 3. The application is made on the grounds that the Council behaved unreasonably in refusing planning permission for a scheme that exceeded the minimum requirements for private outdoor space in the *Houses in Multiple Occupation (HMO) and Flats Supplementary Planning Document (SPD)*. It is also claimed that the Council has been inconsistent in its approach to similar proposals considered against the SPD, and, that the decision notice and Planning Committee minutes refers to erroneous policies.
 4. For the reasons set out in my appeal decision I agree with the applicant that the amount of private outdoor space would be adequate to serve the needs of potential future occupiers. However, the HMO and Flats SPD states that "*It is important that some private outdoor space is provided for residents for outdoor activities where possible*". In this case not all of the proposed first floor flats would have access to private outdoor space. Some residents would have to rely on communal areas within the site and the use of a park nearby. Whilst I have found that this would be acceptable given the context of the site and the type of accommodation proposed, it was not unreasonable for the Council to take a different view.
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5. Furthermore, although the decision to refuse permission was contrary to the Planning Officer's recommendation, the Council has substantiated their position at appeal. The written evidence states that the first floor communal area would not be conducive to informal recreation, drying clothes or for children to use and would therefore be inadequate. These are legitimate concerns. Development plan policy at the time the decision was made also required proposals to achieve a high quality of design with attractive outdoor areas. Reference to erroneous policies did not change this position, and the Council's position was clearly set out in the reason for refusal and their statement.
6. It is also claimed that the Council approved another scheme in October 2016 that was entirely reliant upon communal, rather than private outdoor space (Ref DC/2016/01343). However, no site specific details have been provided to enable any meaningful comparison with the appeal proposal. As a result, it is not possible to conclude that the Council has failed to determine similar cases in a consistent manner as required by the National Planning Practice Guidance.¹
7. I therefore conclude that unreasonable behaviour resulting in unnecessary expense in the appeal process, as described in the National Planning Practice Guidance, has not been demonstrated. For this reason, and having had regard to all other matters raised, an award of costs is not justified.

Matthew Birkinshaw

INSPECTOR

¹ Paragraph: 049 Reference ID: 16-049-20140306