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## Costs Decision

Site visit made on 2 May 2017

**by Graeme Robbie BA(Hons) BPI MRTPI**

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

**Decision date: 19 May 2017**

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### **Costs application in relation to Appeal Ref: APP/N4720/W/16/3165773 141 Brudenell Road, Hyde Park, Leeds LS6 1LS**

- 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 Garvey for a full award of costs against Leeds City Council.
  - The appeal was against the refusal of planning permission for internal alterations and increase of size of lightwell to rear with new doors to rear elevation. Change of use from existing 6 bed C4 HMO to 8 bed Sui Generis HMO.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either procedural – relating to the process, or substantive – relating to the issues arising from the merits of the appeal.
  3. In this instance, the appellant's application relates to both procedural and substantive matters. It is clear to me that the Council made errors in the preparation and drafting of their delegated Officer report, matters which they subsequently sought to correct with the submission of their Statement of Case.
  4. In seeking to correct these matters, the Council revised and reworded the second of the two refusal reasons as part of the submission of their Statement of Case. Although there is disagreement between the parties over exactly when, and by whom, the errors were identified, I accept that the Council, having issued the decision, were limited in their subsequent ability to revisit the wording of the refusal reasons set out in that decision.
  5. However, the appellant had to address the Council's reasons for refusal in the submission of the appeal. Although the errors were communicated between the parties, and their extent clearly set out in the Council's covering e-mail, 'revised' delegated report and Statement of Case, this nonetheless necessitated additional work for the appellant in responding to the Council's revised case.
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6. It seems to me therefore that had the Council determined the proposal as described by the appellant on the planning application form and therefore as originally applied for, and exercised a greater degree of diligence in proof reading the officer delegated report then, whilst the appeal might not have been avoided altogether, the appellant would not have had to spend further time preparing a rebuttal to the revised wording of the second of the refusal reasons. Thus, whilst I am satisfied that the Council's timeliness in responding to the errors did not amount to unreasonable behaviour, I consider their failure to properly consider the original application led to the deficiencies and errors in the delegated officer report and decision in the first instance.
7. This, I conclude, could have been avoided and therefore amounts to unreasonable behaviour. In addressing the revised wording to refusal reason two, I am satisfied that the appellant incurred additional expense which could have been avoided. A partial award of costs to cover the additional expense of preparing and submitting a rebuttal in respect of the revised second reason for refusal is therefore justified.

### **Costs Order**

8. 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 Leeds City Council shall pay to Mr Garvey the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the revised version of the second of the Council's refusal reasons.
9. The applicant is now invited to submit to Leeds 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. In the event that 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 Costs Office is enclosed.

*Graeme Robbie*

INSPECTOR