

Costs Decision

Site visit made on 12 June 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 27 June 2017

Costs application in relation to Appeal Ref: APP/Z4310/W/17/3171743 61 Brookdale Road, Liverpool L15 3JE

- 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 N & F Property for a full award of costs against Liverpool City Council.
 - The appeal was against the refusal of planning permission for conversion of property into 7 bed HMO.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Unreasonable behaviour also includes failure to produce evidence to substantiate a reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The applicant's costs application relates to each of these substantive matters listed as examples, with particular reference to a fallback position provided by Circular 08/2010 and the approach taken by Members of the Council's Planning Committee in making their decision.
 4. The reason for refusal set out in the decision notice is complete, precise and specific to the application. It clearly identifies what the Council considers to constitute harm and states the Saved Policies of the City of Liverpool Unitary Development Plan (UDP), November 2002, to which it considers that the proposal would be in conflict. Furthermore, the Council's evidence includes a statement of case which seeks to substantiate the reason for refusal, given that the decision taken at the Planning Committee was different to officer recommendations. In that respect, I consider that the Council did substantiate the reason for refusal on appeal in terms of the judgements made at the time of decision, notwithstanding the appeal outcome.
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5. It is not necessary that the Council take a methodical approach of addressing every point raised by the applicant's statement of case, provided that the reason for refusal is substantiated. Furthermore, I find no reason to consider that the Council behaved unreasonably in referring to the appeal property as a 6-bed house, despite works already having taken place to convert to a 6-bed HMO, given that planning permission was sought for the conversion to a 7-bed HMO with the submitted plans identifying only 6 existing bedrooms.
6. Circular 08/2010 has been replaced by the PPG and is afforded no weight in my decision. Having regard to the PPG, the GPDO¹ and the Use Classes Order², planning permission is required to change the use of a dwellinghouse or small HMO (up to 6 residents) to a large HMO (more than 6 residents). As such, I cannot conclude that the Council behaved unreasonably in offering little weight to the applicant's stated fallback position relative to Circular 08/2010 when determining a proposal for which planning permission was sought.
7. It will be seen from my decision that I take a different view to the Council's Planning Committee and find no harm relating to the development in terms of the character and appearance of the area, the living environment for future residents or the living conditions of occupiers of neighbouring properties. However, such conclusions reflect matters of judgement on subjective issues, including some areas which have limited or no coverage in the UDP or SPG³, such as standards for number of WCs/ shower rooms and amenity space. Consequently, despite the outcome of the appeal, I cannot conclude that the Members of the Planning Committee behaved unreasonably in reaching a different view to my own, even though contrary to the officer report. In that respect, it is evident from the Minutes of the Planning Committee Meeting that discussion of the status of the existing rear dormer, and any impact it may have, was not a decisive factor on the decision made and therefore, based on the reasons given the Committee did not misdirect itself in making its decision.
8. Having regard to all of the above, I cannot conclude that the Council prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. As the Council have substantiated the reason for refusal and the judgements made reflect objective analysis on subjective issues, I do not consider that its behaviour was unreasonable or that an appeal was unnecessary in this case. Consequently, the applicant did not suffer wasted expense in pursuing the appeal, irrespective of its outcome.

Conclusion

9. I conclude that, on the basis of the evidence before me, it has not been demonstrated that the Council behaved unreasonably or caused unnecessary or wasted expense in so far as an award of costs could be justified. I, therefore, determine that the costs application should fail and no award is made.

Gareth Wildgoose

INSPECTOR

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

³ Liverpool UDP Supplementary Planning Guidance Note 7: Conversion of Buildings into Flats and Bedsits