
Costs Decision

Site visit made on 27 June 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 5 July 2017

Costs application in relation to Appeal Ref: APP/B4215/W/17/3174035 24 Clare Road, Levenshulme, Manchester M19 2GP

- 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 Lau Grady for a full award of costs against Manchester City Council.
 - The appeal was against the refusal of planning permission for the change of use of a C3 dwelling house to a Class C4 house in multiple occupation (HMO).
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appellant asserts that the Council has behaved unreasonably in that it has (i) failed to substantiate its reasons for refusal; (ii) did not indicate that it was necessary for the Inspector to inspect the building as part of the site visit in terms of the completion of the appeal questionnaire; (iii) failed to include copies of all policies with its appeal questionnaire and (iv) that it included new evidence with its appeal statement which was not previously considered at planning application stage.

Substantive Matters

4. In my decision, I have found that use of the appeal building by up to five occupants would not be significantly different to use of the property as a single dwelling house. Whilst the Council have asserted that the proposed use would lead to unacceptable levels of noise and disturbance, I am not satisfied that it has reasonably substantiated this point when compared to use of the property as a family dwelling. Whilst the Council has referred to the "potential" for the property to be used more intensively, this is a matter which can be controlled by means on the imposition of a planning condition. Furthermore, the Council has other powers of control (i.e. a HMO license) which restricts occupancy for other non-planning reasons. I do not consider that the Council has reasonably demonstrated why the former and proposed uses would be materially different in terms of noise and disturbance, or that it has given reasonable consideration to the imposition of an occupancy condition.
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5. In respect of the principle of using the appeal building as a HMO for up to five people, I do not consider that the Council has reasonably substantiated its reasons for refusal. The Council's primary concern in terms of this issue has focussed on the effect of the proposal upon the character of the area taking into account Policy DM1 and H11 of Manchester's Local Development Framework Core Strategy Development Plan Document 2012. The Council has not provided any compelling reasons to substantiate its claim that the use of the appeal building by up to 5 occupants would cause material harm to the character of the area or that the internal accommodation would not be to a high standard.
6. In addition to the above, I have not been provided with any objective evidence to demonstrate that there is an identified shortage of family houses in the area and the local planning authority has not challenged or disagreed with the evidence submitted by the appellant from the Council's Housing Commissioning Manager. Indeed, the Council has not provided any reasonable or objective evidence to indicate that the loss of a family dwelling would threaten the sustainability of the community.
7. As the Council has not substantiated its reasons for refusal, this in itself justifies a full award of costs. However, as procedural matters have also been raised by the appellant I shall deal with such issues below.

Procedural Matters

8. As regards the references to other appeal decisions, it is generally recognised that the main parties will seek to support/supplement their appeal cases with relevant and associated additional information. The fact that such information was not considered at planning application stage does not necessarily equate to unreasonable behaviour. However, I do agree that the various appeal decisions relate to flats and not HMOs. Hence, in respect of these appeal decisions neither the development type nor the planning policy context is directly comparable with the appeal development. Hence, I consider that reviewing these appeal decisions has resulted in additional wasted time and expense on behalf of the appellant.
9. In respect of matters relating to the appeal questionnaire and the omission of some policies, it is unfortunate that the appellant had to make additional enquiries. However, these were relatively minor matters and I do not consider that this led to significant wasted time and expense. Furthermore, I do not doubt that such policies would have been available on the Council's web site had the appellant's professional agent needed to refer to them earlier. In any event, I am satisfied that the appellant was ultimately able to view all policies and note that they are referenced in the various appeal documents. Notwithstanding the Council's appeal questionnaire, the final decision to access the site or not is made by the Planning Inspector. Irrespective of the Council's questionnaire, I would have requested access onto the site (and into the building) in any event.
10. I do not consider that the above matters would in themselves justify an award of costs, but the failure to substantiate the reasons for refusal, coupled with the need to consider the various appeal decisions, demonstrate the sort of unreasonable behaviour which justifies a full award of costs. For this reason, I conclude that the Council has acted unreasonably and that the appellant has been put to wasted time and expense.

Conclusion

11. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Therefore, the application for a full award of costs is allowed.

Costs Order

12. 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 Manchester City Council shall pay to Mr Lau Grady, the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Centre if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
13. Mr Lau Grady is now invited to submit to Manchester 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.

Daniel Hartley

INSPECTOR