
Costs Decision

Site visit made on 19 August 2019 by Hilary Senior BA(Hons) MCD MRTPI

by Susan Ashworth BA (Hons) BPL MRTPI

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

Decision date: 11 October 2019

Costs application in relation to Appeal Ref: APP/Z4310/W/19/3231011 26 Langdale Road, Liverpool, L15 3LB

- 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 H Galip for a full award of costs against Liverpool City Council.
 - The appeal was against the refusal of planning permission for "two storey house 7 occupants".
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Decision

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

Appeal Procedure

2. An Appeal Planning Officer has set out the recommendation below, to which the Inspector has had regard before deciding the application.

Reasons

3. The 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. Costs may be awarded to any party regardless of the outcome of the appeal.
4. 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.
5. The application for costs centres on the appellant's concern that the Council, in reaching its decision on the planning application, rely on emerging policy, rather than on the adopted development plan.
6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan for the area includes the adopted Liverpool Unitary Development Plan 2002 (UDP). The Council is currently in the process of preparing the Liverpool Local Plan, which was submitted for examination in 2018 but has yet to be examined in public or adopted.

7. The National Planning Policy Framework makes it clear that weight may be given by a Council to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections, and the degree of consistency with the Framework. The weight that Council's give to emerging policies is therefore a matter of planning judgement.
8. Policy H11 of the emerging plan is the subject of objections and has been questioned by the examining Inspector. Consequently, it is unlikely to proceed in its current form. Accordingly, that policy can carry only limited weight in the decision-making process.
9. The Council's decision notice refers solely to Policy H11. Some policies from the UDP are listed in the delegated report although Policy H7 which relates to the conversion of buildings for multiple occupation and is therefore relevant to the application, is not listed. The application was not, however, assessed or determined against any of the UDP policies.
10. The reliance solely on an emerging policy which can carry limited weight, and the failure to assess or determine the proposal against adopted policy amounts to unreasonable behaviour.
11. However, the Council was primarily concerned, in its reason for refusal, about the cumulative impact of HMO uses on the character and amenity of the area. Policy H7, which is a permissive policy, requires that consideration is given to the impact of the proposal on the amenity of neighbouring properties and the character of the surrounding area. Therefore, even if the Council had determined the planning application in accordance with the adopted plan, and specifically in accordance with Policy H7, it seems to me likely that the same conclusion would have been reached and the application refused on a similar basis.
12. Consequently, the matter was one of a fundamental disagreement between the parties which could have only been resolved by way of an appeal. As such unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, an award of costs is not justified.
13. For this reason and taking into account all other matters raised, I recommend that the application is refused.

Hilary Senior

APPEALS PLANNING OFFICER

Inspector's Decision

14. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the application for an award of costs is refused.

Susan Ashworth

INSPECTOR