
Costs Decision

Site visit made on 19 November 2019

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 5th December 2019

Costs application in relation to Appeal Ref: APP/B0230/W/3236024 University Hall, University of Luton, 71 Park Street, Luton LU1 3HW

- 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 J O'Grady on behalf of I-Occupy Ltd for a full award of costs against Luton Council.
 - The appeal was against the refusal of an application for planning permission for the Change of use from student accommodation to 80 bedroom house in multiple occupation (Sui Generis).
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Decision

1. The application for costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary expense in the appeal process. It is an accepted principle that parties in planning appeals normally meet their own expenses.
3. The applicant contends that the Council has behaved unreasonably by: a) not properly considering the appeal development; b) by introducing a reason for refusal not included in an earlier application¹ thereby lacking consistency between the two proposals and by failing to address the issue of housing mix in the report to committee on the earlier application; c) by pursuing an alleged increase in crime levels and anti-social behaviour when no-objection was raised by the Police Liaison Officer d) by incorrectly applying planning policy in respect of the required levels of outdoor amenity provision and thereby misleading the planning committee in this regard.
4. I have not been presented with any further information from the planning committee other than the officer report and the applicants' statement to the meeting. I have no evidence that the Council considered this proposal as 80 1 bedroomed apartments as suggested by the applicant. The description reflected that which the applicant applied for and the report laid out the policy context for the application and the assessment of the circumstances following consultee responses. Based on this evidence the Council appears to have acted reasonably in considering the scheme and I have nothing substantive to demonstrate any unreasonable behaviour in this regard.

¹ 18/00496/COU

5. With regard to the introduction of an additional reason for refusal relating to housing mix, it is clear that the interpretation of the policy evolved as additional data came forward. The Policy also makes it clear that it is to be informed by the latest assessments and local circumstances. I have not been provided with the earlier decision notice referred to but I do not find there to be fundamental inconsistency in this regard given more up to date information was considered by the Council.
6. The Council provided evidence in relation to the experience of crime and disorder from the difficulties experienced at a similar proposal of a much smaller scale, the planning issues are wide ranging and whilst I acknowledge that the applicant considers that the police architectural liaison officers comments should have been relied upon, the planning issues relating to the intensity of the use is a concern wider than the architectural security of the building and relates to the nature, intensity and extent of the use. I do not find that the Councils' approach was unreasonable in exploring this matter.
7. In respect of amenity space, the Councils report made it clear that there were no external amenity space standards applicable for HMOs however it explained a rationale for how the figure to be used was reached. This did not amount to the misapplication of policy, particularly as the general design policies require that amenity issues are considered in seeking the delivery of high-quality housing accommodation. This did not amount to unreasonable behaviour.
8. The PPG makes it clear that any application for costs needs to clearly demonstrate the basis for alleged unreasonable behaviour and how this resulted in unnecessary or wasted expense in the appeal process. I have not found that unreasonable behaviour occurred, and it is not therefore necessary for me to consider the matter of the costs of the appeal.

Conclusion

9. In the light of the above findings I have concluded that unreasonable behaviour has not been demonstrated and therefore an award of costs has not been justified.

Janet Wilson

INSPECTOR