
Costs Decision

Site visit made on 12 March 2020

by Adrian Hunter BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd April 2020

Costs application in relation to Appeal Ref: APP/F0114/W/19/3242518 31 Third Avenue, Bath BA2 3NY

- 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 Olly Barkley for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of for a change of use from a 5-bed House in Multiple Occupation (HMO) (Use Class C4) to a 7-bed HMO (Use Class Sui Generis).
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Decision

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

Reasons

2. The National 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 or wasted expense in the appeal process.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The Appellant submits that the Council has acted unreasonably in that it has gone against the advice of its professional officers without good reason and failed to substantiate the objection of an unacceptable increase in noise, waste and vehicle movements. Further, the Council has failed to provide any evidence of the impacts of an over-intensification of the property in an area saturated with HMOs. The proposal complied with the development plan and should have been permitted and the necessary appeal has caused the appellant delay and unnecessary expense.
5. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the highway officers concluded that the proposal would not have a significant impact on the local highway network and, that refusing the application would be contrary to guidance offered in Paragraph 109 of the National Planning Policy Framework (NPPF). Yet little evidence was put forward by the Council to support the issue and establish that there is an existing parking problem, and if so, how this would be made worse on highway safety grounds by the proposal. Nor has the

alleged harm on the grounds of increase in noise and waste been substantiated other than by means of a vague assertion about the level being greater than would be expected from a family home. Furthermore, given the property is already in use as an HMO, the Council have failed to give any clear evidence as to how an additional 2 bedrooms, would increase the intensification of HMOs within the area

6. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the NPPF and the PPG. The appellant has therefore been faced with the unnecessary expense of lodging the appeal.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is 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 Bath and North East Somerset Council shall pay to Mr Olly Barkley, the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to Bath and North East Somerset 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.

Adrian Hunter

INSPECTOR