



Costs Decisions

Hearing Held on 17 September 2019

Site visit made on 17 September 2019

by M Seaton DipTP MRTPI

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

Decision date: 5 May 2020

Costs application in relation to Appeal A Ref: APP/U4610/W/19/3223784 3 Mickleton Road/47a Mayfield Road, Earlsdon, Coventry, CV5 6PP

- 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 Choongh Properties Limited for both a full and partial award of costs against Coventry City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of existing ground floor shop and existing living accommodation into 2 houses in multiple occupation (Use Class C4).
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Costs application in relation to Appeal B Ref: APP/U4610/W/19/3223787 3 Mickleton Road/47a Mayfield Road, Earlsdon, Coventry, CV5 6PP

- 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 Choongh Properties Limited for both a full and partial award of costs against Coventry City Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a change of use of existing ground floor shop (Use Class A1) and existing living accommodation into 2 flats (Use Class C3) with existing garage converted into ancillary living accommodation and erection of new brick wall, railings and gates without complying with conditions attached to planning permission Ref FUL/2016/2928, dated 7 February 2018.
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Decision

1. The applications for costs in respect of **Appeals A & B** are allowed in the terms set out below.

Background

2. 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. Whilst the PPG sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The applications for costs are timely.

The submissions for Choongh Properties Limited

3. The applicant contends that the Council has acted unreasonably for both procedural reasons, and substantive reasons relating to the merits of the appeal.

4. In addressing the matters of procedural unreasonableness, the applicant has highlighted two examples of procedural unreasonableness as set out within the PPG. These examples specifically relate to *only supplying relevant information at appeal when it was previously requested, but not provided, at application stage, and not agreeing a statement of common ground in a timely manner*. Specifically, in respect of the appeals the absence of published delegated reports at the time of the preparation of the applicant's Appeal Statements and the failure to engage in the procedure leading to the completion of a Statement of Common Ground (SoCG) have been cited. A partial award of costs has been applied for in respect of these issues for each appeal.
5. Turning to matters of substantive unreasonableness, the applicant contends that the Council failed in respect of *Appeal A* relating to the change of use to have proper regard to the fallback position of the permitted Class C3 residential use, and the consequent permitted development right which would be conferred for a change to a Class C4 HMO use. Furthermore, it is contended that the Council's reasons for refusal amount to vague, generalised or inaccurate assertions about the proposals which are unsupported by any objective analysis, and therefore are unsubstantiated.
6. With regards *Appeal B*, the applicant has highlighted that there is no reasonable explanation provided as to why the internal layout as applied for would be objectionable on its own merits with no development plan policies cited, and that the internal arrangement of the building in any event falls outside of planning control. Additionally, it is contended that the Council has relied on matters that are wholly irrelevant both in terms of logic and planning law, with it concluded in error that to grant the application would be unlawful as it would represent a fundamental alteration to the original permission.

The response by Coventry City Council

7. The Council's response to the applicant's contended procedural unreasonableness highlights a timeline of events related to the publication of the Delegated Officer Report (DR) following the determination of the planning applications. Furthermore, emphasis is given that the Council engaged as soon as possible on the SoCG allowing for the availability of staffing resources. The outstanding issues were also held to be relatively narrow and sufficiently addressed in the DR, thus not resulting in any unnecessary or wasted costs as a result of the failure to provide an appeal statement or engage on the SoCG.
8. With regards the response to the claims of substantive unreasonableness related to *Appeal A*, the Council's view is that the applicant's application for costs is based upon little more than a disagreement as to the legal arguments and policy application that sits at the heart of most appeals. The issue with regards the claimed fall-back position is contended to not be lawful as the permitted development rights would only be conferred on the implementation of the planning permission for the two Class C3 flats, with the extant nature of the planning permission amounting to a fallback position. Furthermore, it is contended that the Council's position with regards the policy arguments has been properly explained and does not therefore fall within the remit of any of the examples or principles related to an award of substantive costs.
9. In respect of *Appeal B*, the Council accepts that there is substantive unreasonableness with regard to its approach to the s.73 appeal, which correlates with the concession of such as was given at the Hearing.

Reasons

Procedural Reasons

10. I have carefully considered the submissions of the parties on the procedural aspects of the appeals. I have had regard to the chronology provided to indicate the delay in the publication of the DR and have also taken into account the Council's explanation as to the reasons behind the absence of the DR from the Council website. In particular, I note from the submitted table that the initial request regarding the whereabouts of the DR was made 2 days after the date of the Notice of Decision, but from the Council's own account the missing report was only provided to the applicant on 24 July 2019, a significant period of time later and well after the appeal was submitted.
11. Whilst the Council's reasons for refusal should in themselves provide a clear steer as to the matters in dispute, the DR in each instance is the mechanism for providing the detailed expansion and explanation against the development plan and other material considerations for each reason for refusal. Although the Council considers that the issues raised were sufficiently narrow to allow a full understanding of its position from the Notices of Decision, it is evident from the conclusions which I reached as set out in the appeal Decision Letter that the Council's case in respect of the two appeals was not as clear as contended. The failure to produce the DR would have undoubtedly restricted the applicant's ability to interrogate and respond to the Council's position as set out in the Notices of Decision at an early stage and in preparing their own appeal case.
12. With regards the failure of the Council to produce a Statement of Case during the appeal, I note the Council's acceptance that it should have produced a Statement of Case and engaged on the SoCG sooner, but that the DR provided sufficient detail to support and set out the Council's position. Whilst the latter statement may well be the case, the DR was ultimately provided to support the Council's 'Questionnaire' documents 4 weeks after it was first highlighted as having missed the appeal submission deadline. I find that this additional delay in producing a document which should have been available at the time of the Council's determination of the planning applications, and the subsequent failure to engage in any meaningful way on the production of an agreed SoCG at an early stage has further compounded the Council's previous procedural failings.
13. I have noted the Council's explanation as to the corruption of the original electronic DR, the need for a re-write, as well as the unfortunate reference to the February 2019 iteration of the National Planning Policy Framework (the Framework), which was published some weeks after the planning applications were determined. However, whilst this has provided further confirmation of the timing of the re-writing of the DR after the publication of the Notices of Decision, I do not consider that on the basis of the evidence before me and in light of my reasoning above that this takes my assessment of the procedural matters any further forward.
14. On the basis of the Council's own timeline there can be no dispute that the DR was not available to the applicant at the time of the submission of the appeals, and the failure to submit a Statement of Case in a timely manner or substantively work towards an agreed SoCG must also weigh against the Council from a procedural standpoint. Although I have had regard to the Council's submissions on the unavailability of staffing resources, I nevertheless find that the failure of the Council to resolve these matters in a timely fashion

is a clear indication of procedural unreasonableness, and from which there has been undoubted unnecessary and wasted expense.

Appeal A - Ref: APP/U4610/W/19/3223784

Substantive Reasons

15. It is an established position as set out in the Decision Letter of the appeal, and accepted by the Council, that there exists a valid fallback position whereby the applicant could implement the earlier change of use to two Class C3 residential units with the requisite planning permission extant. Furthermore, the respective submissions of the applicant and Council also concur that were the Class C3 permission to be implemented and occupation in accordance with the use commenced for the requisite period that in the absence of any restrictive condition removing the permitted development right, a change of use to a Class C4 HMO could occur.
16. I have had regard to the various submissions of the parties in respect of the lawful mechanism by which a change to a Class C4 use may take place. However, I find that irrespective of the mechanism by which the development could end up being a Class C4 use, the Council's acceptance that the Class C3 permission was extant, combined with the absence of the removal of permitted development rights to a Class C4 use, had to be an important material consideration in assessing the proposed change of use. Furthermore, in the light of the previous albeit ceased unlawful use of the premises as an HMO and the applicants stated intentions, the probability of the permitted development right being exercised was clearly a matter of substance against which to weigh the proposed development.
17. As I concluded in the Decision Letter to the appeal, it is entirely conceivable that the Class C4 use would be implemented in the passage of time. However, I am not persuaded that the Council applied itself with suitable rigour in its decision-making to the particular circumstances of the proposed development in this respect, having regard to the clear intention of the applicant and the probability of the Class C4 use ultimately occurring.
18. Turning to matters related to the substantiation of the Council's reasons for refusal, I note the matters as raised essentially related to qualitative issues as they would affect the living conditions of neighbouring occupiers through noise and general disturbance, and through the contended impact on existing on-street parking through an increased demand due to an intensification of the use of the property.
19. It is beholden on the Council to ensure that the reasons for refusal do not amount to vague or generalised assertions about the proposals, and to ensure that they have been properly supported by objective analysis. In this regard, no substantive evidence was adduced to support the Council's conclusions over the claimed harm to the living conditions of neighbouring occupiers from comings and goings in connection with the use of the property as an HMO, with a series of generalised assertions instead relied upon.
20. As I set out in the Decision Letter, it is quite conceivable that the level of disturbance would not necessarily differ from the occupation of the two Class C3 units given the quantum of occupation. However, in respect of the comings and goings the Council did not reflect upon the contrast between the proposed

development and the previous lawful Class A1/C3 use other than with regards parking demand, and the impact of the potentially greater level of unrestricted comings and goings that may have arisen in connection with the operation of the retail use. The Council also did not undertake any technical assessment to corroborate the claimed levels of parking stress and on-street parking demand, with the conclusion contrary to that of the Council's own Highways Team. There was also no apparent assessment of the impact on likely levels of car ownership in this sustainable location, which would appear to have informed the previous 2017 & 2018 planning permissions.

21. I consider that the Council's generalised and unsubstantiated assertions over the impact of the proposed development are sufficient alone to represent a demonstration of substantive unreasonableness from which unnecessary or wasted expense, as described in the PPG, has been demonstrated and that this would warrant a full award of costs. However, I also find that the absence of consideration of the probability of the future implementation of the Class C4 HMO in the circumstances of the proposed development to add some further weight to this conclusion, albeit as with the main planning appeal, the conclusion on this aspect of the application for costs is not determinative.

Appeal B - Ref: APP/U4610/W/19/3223787

Substantive Reasons

22. As I concluded in the main Decision Letter, it became apparent that the Council's analysis and conclusions related to the s.73 appeal had been premised upon consideration of the wrong plan, specifically the plan demonstrating the layout as proposed for the Change of Use application to Use Class C4. Further to this, the Council conceded at the Hearing that had the assessment of the proposal been based on the correct submitted plan, they would have in all certainty have allowed the s.73 application.
23. This position is now reflected in the Council's acceptance that that there has been substantive unreasonableness with regard to its approach to the s.73 appeal, and on this basis I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that this would warrant a full award of costs.

Costs Order

24. 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 Coventry City Council shall pay to Choongh Properties Limited the full costs of the appeal proceedings for **Appeals A & B**, such costs to be assessed in the Senior Courts Costs Office if not agreed.
25. The applicant is now invited to submit to Coventry 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.

M Seaton

INSPECTOR