
Costs Decision

Site visit made on 14 July 2020

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 21 July 2020

Costs application in relation to Appeal Ref: APP/P4605/W/20/3244206 30 Reservoir Road, Edgbaston, Birmingham B16 9EG

- 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 Mrs Jayne Watson for a full award of costs against Birmingham City Council.
 - The appeal was against the refusal of planning permission for change of use to 6-bed House in Multiple Occupation (HMO) (Use Class C4).
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Decision

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

Preliminary Matter

2. The applicant suggests that the Council has acted in a 'Wednesbury unreasonable' manner in the appeal. However, in the context of a costs application, the term 'unreasonable' is to be used in its ordinary meaning as established by the Courts¹ and not in the stricter public law definition of 'Wednesbury unreasonable'. That is the approach I have taken.

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. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to the substance of the matter under appeal; for instance, by unreasonably refusing planning permission or defending appeals. Examples include a failure to produce evidence to substantiate each reason for refusal and making vague, generalised or inaccurate assertions about a proposal's impact, unsupported by any objective analysis.
4. The applicant argues that the Council's evidence in the appeal diverges from the conclusions in the report to Committee. The report expressly stated that the 'worst case scenario' in relation to the concentration of HMOs locally included [at the time] undetermined HMO licence applications. However, it is evident that this was not the only factor taken into account by the Council's officer when reaching a conclusion that an argument to sustain a refusal on the basis of adopted policy could not be made. This is clear in paragraph 6.10 of the report, where the officer states "...as well as the mix of..." [my emphasis].

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

5. Elected Members clearly took an alternative view to their officer, thereby leading to the application being refused and the appeal being made. In the appeal, it then fell on the Council to substantiate the reasons for refusing the application. It did so at paragraph 20 of its Statement of Case where, in addition to the 11.1% figure, it is clearly argued that the Council has no control over whether a property is granted an HMO licence and that houses could be converted to HMOs in the absence of an Article 4 Direction. Thus the 11.1% figure was not the only consideration put forward by the Council in defending the appeal.
6. The preparation of 'final comments' is part and parcel of the appeal process in written representations cases and follows the convention of giving appellants the final say. It is to be expected by those who appeal, that there may be a need to address matters raised by the local planning authority and other parties once its statement of case is submitted and other representations have been received. However, there is no absolute necessity to do so and the choice remains with the appellant. In any case, a substantial proportion of the appellant's final comments also sought to address matters raised by other parties in addition to those of the Council. There is no sound basis on which to award costs for the preparation of final comments.

Conclusion

7. I do not find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated.

H Baugh-Jones

Inspector