
Costs Decision

Site visit made on 29 June 2020

by J Gibson BUEP MPIA

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Costs application in relation to Appeal Ref: APP/P4605/W/20/3246678 48 Asquith Road, Ward End, Birmingham B8 2HL

- 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 A Mughal for a full award of costs against Birmingham City Council.
 - The appeal was against the refusal of planning permission for a change of use of dwelling house (use class C3) to 8 bed HMO (sui generis).
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Decision

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

Procedural Matters

2. The existing use of the appeal site has been described by both parties as a dwelling house in use class C3. During my site visit I observed that the appeal site had been converted into a six bedroom house in multiple occupation (HMO) in use class C4, which the applicant suggested may occur using permitted development rights in their statement of case. This was not contested by the Council. Notwithstanding the description of development set out above, which is taken from the appeal application form, I have determined the case on the basis that the appeal site is currently a small HMO in use class C4.

Reasons

3. Paragraph 030 of the 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 directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal.
4. The applicant's case centres around the contention that the Council did not adequately demonstrate that the proposed eight bedroom house in multiple occupation (HMO) would amount to unacceptable harm, would conflict with the Development Plan, or that any such concerns could not have been appropriately resolved by conditions.
5. In determining the appeal I concluded that planning permission should have been granted. Based on the evidence provided, I am not satisfied that the Council has adequately substantiated their reasons for refusal or identified actual conflicts against the relevant national and local policies. It is also

unclear whether the Council gave regard to other material considerations, such as the suggested fallback position of establishing a six bedroom HMO under permitted development rights, which was communicated by the applicant through email correspondence during the application stage. I therefore consider that the Council's reasons for refusal were unacceptably vague and generalised assertions without substantive evidence or analysis to support this.

6. A full award of costs is sought for expenses associated with the appeal, including the submission of Freedom of Information Requests to the Council and delays to the refurbishment and use of the appeal site as intended. However, the applicant has failed to demonstrate how the Freedom of Information Requests related to the making of the appeal, and therefore are not considered to be justified in this instance. The claim with respect to delays refurbishing the appeal site and use as intended is also unjustified given I observed the required works had already been carried out during my site visit. Nonetheless, such indirect costs are not supported under Paragraph 032 of the PPG.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified for direct costs associated with the appeal. Costs associated with the Freedom of Information Requests and the refurbishment and use of the appeal site are to be excluded.

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 Birmingham City Council shall pay to Mr A Mughal, the costs of the appeal proceedings described in the heading of this decision, excluding the costs associated with the Freedom of Information Requests and the refurbishment and use of the appeal site.
9. The applicant is now invited to submit to Birmingham 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. 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.

J Gibson

INSPECTOR