



Costs Decision

Hearing Held on 24 November 2020

Site visit made on 26 November 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th December 2020

Costs application in relation to Appeal Ref: APP/T3725/W/19/3242712 89 Shrubland Street, Leamington Spa CV31 2AR

- 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 Ms Jagir Gill for a full award of costs against Warwick District Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for use of building for House in Multiple Occupation (HMO).
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Decision

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

The submissions for Ms Jagir Gill

2. The Council invited the application and then acted unreasonably by:
 - Taking 11 weeks to confirm that it was valid.
 - Continually assessing the concentration of HMOs incorrectly.
 - Misdirecting itself, resulting in an intention to refuse the application.
 - Failing to determine the application within the prescribed period without good reason.
3. The Council has a history of over-calculating the number of HMOs in a given area by relying on the number that are licensed. This approach was found to be unsound in an appeal relating to a nearby site in 2014¹. Only HMOs that have planning permission or are lawful should be counted.
4. The Council's behaviour caused substantial delays, uncertainty, anxiety and stress. Unnecessary costs incurred in appealing the failure to determine the application could have been avoided if the Council had correctly assessed the concentration of HMOs and determined the application in a timely manner.

The response by Warwick District Council

5. The original calculation of 50 existing HMOs included ones without planning permission. Any that existed before 1 April 2012, when a Direction² came into

¹ APP/T3725/A/13/2209145, allowed 23 July 2014.

² Under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015

force, could have been formed without the need for planning permission. Council Tax records indicate that many of the 50 HMOs had been continually used from before the Direction came into force and were likely to be lawful.

6. Following further research, HMOs not believed to be lawful were excluded, resulting in a revised estimate of 20%, adjusted to 19.8% at the Hearing. This figure is above the development plan's threshold for resisting further HMOs³, justifying the intention to refuse the application.

Reasons

7. The Planning Practice Guidance (the PPG) advises that costs may be awarded if a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
8. While the delay in validation may have caused distress to the applicant, evidence that it resulted in unnecessary or wasted expense has not been presented. At the Hearing it was confirmed that student tenancies begin on 1 September each year. The prescribed period for determination of the application extended beyond this date in 2019 so, even if there had been no delay in validation, a decision before the property needed to be let could not be assumed. In any event, the property was let from September 2019 and no financial impact has been shown.
9. Only the 2014 appeal decision was cited in support of the claimed history of continued wrongful assessment of HMO numbers. At the Hearing it was agreed that the issue in dispute in that case had been different from this appeal. In view of this, and with only one other case being cited, a history of continued incorrect assessment has not been demonstrated.
10. The relevant development plan policy and its explanatory text do not suggest that the calculation of HMOs within a 100m radius of the site should be limited to those with planning permission or considered lawful. Nevertheless, the Council modified its approach in that way and presented revised calculations in a written response and at the Hearing. However, no evidence that the Council should have modified its approach earlier, before it advised the applicant that it intended to refuse planning permission, was presented. Accordingly, it has not been demonstrated that the Council misdirected itself.
11. The revised calculations indicate that the proportion of HMOs either permitted or likely to be lawful within a 100m radius of the appeal site is substantially higher than normally allowed by the development plan. Accordingly, it has not been demonstrated that, had the Council modified its approach in this way and then determined the application, it would have resulted in a different outcome.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mark Harbottle

INSPECTOR

³ In policy H6 of the Warwick District Plan 2011-2029.