



Costs Decision

Site visit made on 9 March 2021

by G Pannell Bsc Hons MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th March 2021

Costs application in relation to Appeal Ref: APP/W5780/W/20/3260547 7 Wellington Road, Wanstead, E11 2AN

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Tharmalingham Sureshkumar for a full award of costs against the London Borough of Redbridge.
- The appeal was against the refusal of planning permission for change of use from (C3) dwelling house to a large HMO (Sui Generis).

Decision

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

Reasons

2. The Planning Practice Guidance 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.
3. Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. They are at risk of an award of costs if they behave unreasonably by not determining similar cases in a consistent manner.
4. The Council has acted inconsistently in refusing the proposal due to concerns over the impact on living conditions for future occupiers. This is because it did not have these concerns when considering the previous scheme, which proposed a layout that was similar in terms of the areas of communal space. The Council has failed to provide a proper explanation why it has come to a different finding. This is especially pertinent because the Housing Design Guide Supplementary Planning Document (2019) was part of the made plan when the Council arrived at its original decision.
5. The Council dealt with the current proposal on the basis of 20 occupants, and amended the description of development accordingly, without the consent of the appellant. It has been put to me, that on this basis, the Council was entitled to reconsider the merits of the proposal again. However, the information submitted with the application in the form of the management plan indicated that the occupation of the proposed House in Multiple Occupation (HMO) would be limited to single occupancy on the first floor. Therefore, I conclude the Council should have had regard to this in their consideration of whether the accommodation would meet the relevant standards and whether they were reasonably entitled to reach a different conclusion with regard to living conditions.

6. In determining a previous appeal¹ at the appeal site, the Inspector came to no findings regarding the impact on the living conditions of future occupiers. This is presumably because it was not a point in dispute that required resolution and, because the appeal was dismissed for other reasons, the Inspector did not need to reach findings on them. Therefore, the Council have not departed from the findings of a previous Inspector. Nevertheless, they have acted inconsistently in departing from their own decision. Not determining similar cases in a consistent manner is a type of unreasonable behaviour listed in the PPG.
7. Furthermore, there is nothing in the evidence before me to suggest that the Council has worked with the applicant in a positive and proactive manner based on seeking solutions to problems that may arise when processing the application, except a citation on the decision notice which appears to be a standard paragraph. The applicant has indicated that no contact was made between the parties. This would have given the opportunity for the appellant to address the council's concerns and amend their scheme accordingly, negating the need for an appeal. I consider that the inaccurate assertion of the proposals impact, based on 20 occupants, and not dealing the applications in a consistent manner has resulted in unreasonable behaviour.
8. Although the Council withdrew their second reason for refusal, I do not agree that this was unreasonable as the need for mitigation for Special Areas of Conservation is an area where the policy has evolved and the Council, in their appeal statement, updated their position on this matter taking account the latest legal advice they had.
9. Had the Council properly considered the first application then it would not have needed to act in an inconsistent way when considering the second. The Council were correct to refuse the second application because it would be harmful. However, in so doing it acted inconsistently and thus unreasonably. This left the appellant in a very difficult and unclear position. Had the Council acted in a more consistent manner throughout the two applications then it's likely the appellant would have had adequate clarity and consequently the second appeal, and the costs associated with it, could have been avoided altogether.

Conclusion

10. In conclusion, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 the the Council of the London Borough of Redbridge shall pay Mr Tharmalingham Sureshkumar the costs of the appeal proceedings described in the heading of this decision.
12. The applicant is now invited to submit to the London Borough of Redbridge, 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

¹ APP/W5780/W/19/3241480

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.

G Pannell

INSPECTOR