



Costs Decision

Site visit made on 27 May 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th June 2021

Costs application in relation to Appeal Ref: APP/N4720/W/21/3269673 52 Dawlish Road, Osmondthorpe, Leeds LS9 9DS

- 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 Thomas O'Hearne for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for change of use from a single dwelling (C3) to a HMO (C4).
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Decision

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

Reasons

2. 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 caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG outlines that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicant outlines that they were informed during the application that a favourable recommendation would be made on the proposal. In these circumstances, I acknowledge that the ultimate refusal of planning permission would aggrieve the applicant following such an indication and that this aggravance would be exacerbated owing to the timescale over which deliberations took place. That said, indications of recommendations do not bind the decision maker until their formal decision has been issued. Senior Officers with delegated powers may take a different view to the recommendation put before them. The fact that in this case the eventual decision was not what had been indicated does not amount to unreasonable behaviour by the Council.
5. In specific reference to the delay in determination of the application, although no formal extension was agreed to the time limit, the evidence shows that discussions were ongoing, with the Council providing explanations for any delays on their part. The applicant declined to appeal against the failure of the

Council to determine the application within the statutory timeframe and thus I do not agree that the Council have behaved unreasonably in this regard.

6. The applicant contends that as the decision was based solely on the Officer's perceived assessment of the living conditions for future occupants, this amounted to unreasonable behaviour, including through the application of guidance in the Draft SPD. The fact that the issues in the assessment required a planning judgement to be made by the relevant Officer with them giving weight to the Draft SPD, does not, despite my view to the contrary, amount to unreasonable behaviour. Although the Council appear to have no objection to the principle of the HMO, this does not relieve them of assessing the proposed development against all relevant issues of acknowledged importance, including the living conditions of future occupants.
7. Although it can be seen from my decision that I disagree with the Council's determination, it does not amount to unreasonable behaviour. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of the Leeds Core Strategy (Review 2019) and the Leeds Unitary Development Plan (2006) that the Council considered the proposal would conflict with. This reason has been adequately substantiated by the Council in its Officer Report and Appeal Statement which demonstrates how they considered the proposal would not provide acceptable living conditions for future occupants.
8. I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the development which justified its decision. The applicant had to address those concerns in any event.
9. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense. I find nothing to suggest that a decision was not reached on the basis of the planning merits of the development.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated. Therefore, a full award of costs is not justified.

A M Nilsson

INSPECTOR