



Costs Decision

Site visit made on 9 August 2021

by James Blackwell LLB (Hons)

an Inspector appointed by the Secretary of State

Decision date: 20 August 2021

Costs application in relation to Appeal Ref: APP/G3110/W/21/3275656 143 Windmill Road, Oxford OX3 7DN

- 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 Harold Grant for a full award of costs against Oxford City Gloucestershire Council.
 - The appeal was against a refusal of planning permission for a change of use from C3 to C4 (HMO).
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Decision

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

Reasons

2. 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 state 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 making vague or generalised assertions about a proposal's impact, by failing to provide evidence to substantiate reasons for refusal, or by preventing or delaying development which should clearly be permitted having regard to the development plan, national policy and other material considerations.
3. This appeal primarily hinged on the application of a threshold test set out in Policy H6 of the Council's Local Plan¹, which should be adopted when proposals for HMO development are being considered. The test is used to establish the proportion of HMOs within 100m of the street length on either side of the application site. If this proportion is below 20%, planning permission for HMO development may be granted (subject to the development meeting other prescribed criteria).
4. The wording of Policy H6 is prescriptive as to which buildings should be counted for the purposes of the relevant calculation. The Policy clearly states that "*all buildings opposite*" the relevant street frontages shall be included. However, the Council discounted certain buildings from its calculation, namely the Oxford Centre for Enablement, the ACE Centre and the Occupational Therapy and Hydrotherapy Building, despite these clearly being opposite the frontage of the appeal property. This meant that the Council's calculation resulted in an HMO proportion which exceeded 20%, which therefore justified refusal of the

¹ Oxford Local Plan 2036 (adopted 8th June 2020)

application. Had these buildings have been included in the calculation in accordance with the policy wording, the relevant calculation would have resulted in a proportion of 19%, which would have been within the threshold limit.

5. Based on the correspondence between the applicant and the Council, it appears that planning permission would have been granted, but for the proportion of HMOs exceeding this 20% limit. On this basis, if the Council had carried out the calculation correctly, the proposed development would likely have been permitted. On this basis, I consider that the Council unreasonably withheld permission, in conflict with the approach in the PPG. Therefore, a full award of costs is justified.

Costs Order

6. 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 Oxford City Council shall pay to Mr Harold Grant Ltd the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
7. The applicant is now invited to submit to Oxford City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

James Blackwell

INSPECTOR