
Costs Decision

Site visit made on 18 August 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2021

Costs application in relation to Appeal Ref: APP/D1780/W/20/3265347 72 Burgess Road, Southampton SO16 7PP

- 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 Rosemary Lewis for an award of costs against Southampton City Council.
 - The appeal was against the refusal of planning permission for conversion of existing dwelling into 4 x 1-bed flats (bedsits) with associated parking and cycle/refuse storage.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking an award of costs on substantive and procedural grounds.

Substantive

4. The Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include: 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; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. The applicant's claim on substantive grounds relates to a failure of the Council to correctly apply Core Strategy Policy CS16 or identify actual harm in planning terms in respect of the first reason for refusal.
6. It will be seen from my Decision, which accompanies this Costs Decision, that I do not agree with the Council's conclusion in respect of the impact of the

proposal on the provision of family housing. However, I am satisfied that the Council has shown that it was able to substantiate the first reason for refusal. The reason for refusal, as set out in the decision notice is complete, precise and specific to the application. It clearly sets out the policy of the *Local Development Framework Core Strategy Development Plan Document* (as amended 2015) (the Core Strategy) against which the proposal would be in conflict.

7. The reason for refusal has been adequately substantiated by the Council in its Officer Report and Statement of Case, which explains why the Council considers that the proposal would be contrary to the Policy CS16 objective of preserving the stock of family homes, having regard to the suitability and appropriateness of the existing property for family occupation in the light of the Policy CS16 definition of a family home, and given that the existing HMO use could change to a Class C3 dwellinghouse without the need for planning permission. Moreover, in determining the planning application after the decision had been made on the Certificate of Lawfulness application, the Council's consideration of Policy CS16 was made in the knowledge that the lawful use of the property was that of a HMO. Although I have not agreed with the Council's first reason for refusal, for the reasons given in my accompanying decision, I do not find that the Council has acted unreasonably in terms of its interpretation of Policy CS16, having regard to the requirement of criterion 2 of the Policy.

Procedural

8. The applicant's claim on procedural grounds relates to the Council's behaviour during the validation and determination of the planning application, particularly in regard to the length of time taken, and the nature of communication with the applicant.
9. Although costs cannot be claimed for the period during the determination of the planning application, the Guidance confirms that costs applications may relate to events before the appeal. It goes on to say that, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. The guidance also states that all parties are expected to behave reasonably throughout the planning process and that the Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.
10. The evidence before me is that, whilst the Council were unable to validate the application as originally submitted, on-going engagement with the applicant's agent took place, during which the Council provided advice to enable the application to be validated.
11. I appreciate the applicant's frustration in respect of the time the Council has taken to respond to emails from the applicant's agent during the course of the application, and that the application was refused prior to a discussion with the case officer, as requested by the applicant.
12. I do not find that the Council acted unreasonably in suggesting that the determination of the planning application be held in abeyance until a decision be made on the concurrent Certificate of Lawfulness application, which was submitted after the planning application, and would provide useful information

to inform the determination of the planning application. I note that this, in itself, did not result in an unduly lengthy delay in the determination of the application.

13. I also find no substantive evidence that the applicant incurred any additional expense as a result of the time taken to determine the application, and that the delay occurred on the basis of a refusal of planning permission and not non-determination.
14. Whilst the communication process with the Council must have caused the applicant some concern, and I appreciate that the outcome of the application will have been a disappointment to the applicant, I find nothing to suggest that a decision was not reached on the merits of the proposal, as submitted by the applicant.
15. As such, I do not find that the Council acted unreasonably having regard to procedural matters during the course of the planning application process. In coming to this view, I am mindful that the applicant did not seek pre-application advice from the Council, as advocated in the *National Planning Policy Framework 2021*. I have also taken account of the unprecedented impact on the work environment in general associated with Covid-19.
16. In respect of the appeal process, I have noted the late submission date of the Council's Statement of Case. The Council has explained that the Statement had been submitted some 6 months earlier but there had been an error on the part of the Council in labelling the Statement of Case as a 'cost rebuttal'. Whilst this is unfortunate, I do not find that this administrative error in itself amounts to unreasonable behaviour.
17. Having regard to the above, I find that the Council was entitled to refuse the application and defend the appeal and has not acted unreasonably in so doing.

Conclusion

18. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S Leonard

INSPECTOR