
Costs Decision

Site visit made on 23 November 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date:

Costs application in relation to Appeal Ref: APP/W2465/W/21/3274727 17 Stretton Road, Leicester LE3 6BL

- 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 Mrs Suzi Walker, Kedron Properties Ltd for a full award of costs against Leicester City Council.
 - The appeal was against the refusal of planning permission for change of use from a 6-person HMO (Use Class C4) to a 7-person HMO (Sui Generis).
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Decision

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

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.
3. The application for a full award of costs is on the basis that the Council failed to determine the planning application within the statutory timescale and that the application remained undetermined for some time beyond this statutory period without explanation. The applicant suggests that this left them with no alternative as to appeal the decision as there was a lack of co-operation from the Council throughout the application and determination process.
4. The PPG indicates that a local planning authority's handling of a planning application prior to the appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour. The guidance states that if the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation for the delay.
5. The matter of the first application is irrelevant as it does not form part of this appeal. From the Council's decision notice, it appears that the application the subject of this appeal, was dated (registered) on the 14 July 2020, with the Officer's report stating the expiry was 7 September 2020. I have not been provided with any evidence as to why the publicity expiry was the 9 September 2020 after the statutory expiry. Nevertheless, the application was not determined until 18 February 2021. It is also not clear whether a site visit was undertaken as the Council's evidence appears to heavily rely on the previous submission and reference to another Officer's conclusion.

6. The Council's failure to determine the application is a matter of serious concern and in this case has fallen significantly short of nationally prescribed expectations. The applicant states that over a four-month period emails were exchanged mostly seeking updates. However, I have not been provided with any evidence of those exchanges on timescales to reach a conclusion or be satisfied that this period of unexplained delay is unacceptable. Particularly, as the appellant acknowledges that the Council did eventually respond advising the application would be refused. I also have no evidence from the main parties as to whether any extension of time was agreed for any of the period of the application.
7. Furthermore, in line with the PPG, if the applicant was not satisfied with the engagement following the statutory time period for some time. The option to appeal against non-determination is available¹ in such circumstances, but this opportunity was not taken up.
8. The applicant also contends that as a further consequence of the lack of co-operation on the part of the Council, relates to the mis-leading of the plans, other basic errors that have appeared in the Officer's report including vague, generalised or inaccurate assertions about the proposals impact. The applicant's final comments also set out that the failure to submit an appeal statement or reply to the costs is an example of unreasonable behaviour.
9. The Council did not provide a statement of case to support their decision. However, the questionnaire indicated they did not intend to send a full statement of case, which is in accordance with the appeals procedure guidance. The lack of response to a cost application, does not necessary mean it has no defence, and it is one of choice for the Council to respond to such. Therefore, I have no substantive evidence that the Council failed to provide information at appeal stage or adhere to those deadlines.
10. Nonetheless, as the questionnaire and supporting documents are the Council's full representation on appeal including the delegated officers report. It is evident from this that the Officer has mis-understood the proposal in part. It appears that they have confused this proposal to some degree with the previous one, including existing and proposed plans. The report also heavily relies on what a previous 'officer report' included. Therefore, on this basis the report could be seen to be misleading in part in assessing elements of the proposal against the proposed plans.
11. However, it is clear that the Council assessed the proposal on the basis of the change of use from a 6-persons to a 7-persons HMO. Albeit that the report is somewhat confusing and vague in parts. From the evidence before me, the Council did correctly objectively assess against policies in the development plan. I also find it is not unreasonable for the Council to assess what the current situation is with the property and how the proposal would impact further on this.
12. Moreover, the existing plans do show a double bedroom which from the evidence is not existing at present as it is occupied by 1 person. This seems to have added to the confusion, whilst the applicant did not wish to add 'double' on the proposed plans for clarity. I have already set out in my formal decision to the reasons the proposal is in conflict with the development plan, national

¹ Paragraph:012 Reference ID:16-012-20140306 Revision date: 06 03 2014

policy and relevance to the national space standards. Therefore, these matters which have been raised were one of a fundamental disagreement between the parties which could have only been resolved by way of an appeal.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. A claim for costs is not therefore justified. Accordingly, it is hereby refused.

K A Taylor

INSPECTOR