
Costs Decision

Site visit made on 15 February 2022

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st March 2022

Costs application in relation to Appeal Ref: APP/Q5300/W/21/3281419 11 Queensland Avenue, Edmonton N18 1AT

- 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 Mona Larijani (KIKS Group Ltd) for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the refusal of planning permission for change of use from a dwelling (C3 use) to an 8 bedroom 8 person HMO (Sui Generis) including two storey side to rear extension, hip to gable roof extension and rear dormer.
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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 applicant claims that the Council acted unreasonably as the planning application clearly shows that permission was sought in part for the creation of an 8 person House in Multiple Occupation (HMO), but it was registered as a proposal for an HMO within Class C4¹, which is defined as 'the use of a dwellinghouse by not more than six residents' as an HMO. It is also put forward that the Council did not adopt a collaborative approach to working with the applicant during the application process. Additionally, the applicant claims that the Council failed to substantiate its refusal reasons. In particular, it is argued that the Council has allowed several similar schemes to the appeal proposal and made its decision based on an inaccurate assertion that 13 Queensland Avenue comprised 2 flats.
4. The PPG sets out examples of unreasonable behaviour which may result in costs being awarded against councils. Examples include where there has been a lack of co-operation; development has been prevented or delayed which should clearly be permitted; evidence has not been produced to substantiate each refusal reason on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, have been made; and cases have not been determined in a consistent manner.

¹ Class C4 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987

5. The Council acknowledges that it changed the description of the development but has not been able to substantiate its reasons for doing so. However, it is clear from the officer's report that the proposal was assessed on the basis that the proposal included the creation of 8 bedrooms and that a greater number of people than the Class C4 definition might occupy the HMO. I am satisfied that none of the Council's refusal reasons would have been significantly different if the proposal had been registered with the same description as the one on the application form. As such, unnecessary or wasted expense in respect of this matter has not been demonstrated.
6. I have been provided with written pre-application advice from the Council relating to a similar scheme to the appeal proposal at the site. It clearly sets out the Council's concerns and the anticipated outcome of an application. Based on the evidence before me, the Council engaged with the applicant adequately.
7. I have set out in the appeal decision that I do not consider that there are any directly comparable schemes to the proposed one. Moreover, each application must be considered on individual merit. The evidence does not indicate that the Council failed to determine cases in a consistent manner.
8. The Council informed the applicant via the pre-application advice and the officer's report that it had evidence indicating that 13 Queensland Avenue comprised 2 flats, which is supported by a planning permission that is described as partially retrospective². Paragraph 8.8 of the Planning, Design and Access Statement, which was provided with the application, acknowledges but does not dispute the Council's stance at pre-application stage. Whilst the applicant provided evidence with the appeal indicating that No 13 may comprise a single dwelling, it was reasonable for the Council to have determined the application in the manner it did. Furthermore, and notwithstanding my findings, it was reasonable for the Council to conclude that the information it held outweighed the applicant's evidence at appeal.
9. Therefore, it has not been demonstrated that the Council has prevented or delayed development which should clearly be permitted; failed to substantiate each refusal reason on appeal; or made vague, generalised or inaccurate assertions about the impact of the development.

Conclusion

10. Unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated. The application for an award of costs is refused.

Mark Philpott

INSPECTOR

² Council reference: TP/08/0731