

Costs Decision

Site visit made on 4 April 2022

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 18th May 2022

Costs application in relation to Appeal Ref: APP/P0240/W/21/3283440 Flaxbourne Farm, Salford Road, Aspley Guise MK17 8HZ

- 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 G Barrett for a full award of costs against Central Bedfordshire Council.
 - The appeal was against Conditions 2, 3, 4, 5, 6 and 7 of planning permission for the retrospective change of use of dwelling house to a house of multiple occupation (sui generis).
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Decision

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

Reasons

2. The National 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 or wasted expense in the appeal process. The PPG makes clear that a local planning authority can be at risk of an award of costs which can be either procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.
3. In this particular appeal, the applicant has concerns regarding each of the six conditions placed on the decision by the Council and seeks costs on the grounds that the Council acted unreasonably in the way that it handled the application by imposing conditions that are not necessary, reasonable or enforceable and thus do not comply with the National Planning Policy Framework (The Framework) or the PPG.
4. In relation to Condition 2, the wording of this condition was found to be appropriate, however was reworded in accordance with the Council's suggestions. The applicant has submitted emails detailing conversations with the Council and updates as to the progress of the application and that there was no real discussion between the Council and the applicant with regards to the appropriateness of the conditions to be placed on the permission. Whilst there is no policy or legislation which requires the Council and the applicant to converse on non pre-commencement conditions, it is considered good practice to do so.
5. Whilst Condition 2 could have been written differently, the condition was still necessary to place on the Decision Notice. The change in wording has not required the condition to change its overall nature or function. Whilst I believe that the Council could have acted better to resolve such issues around wording

prior to the decision being issued, I do not consider that the Council has behaved unreasonably by the placement of this condition. Taking the above into account, in relation to Condition 2, I do not agree that unreasonable behaviour as defined by the PPG has been demonstrated.

6. For Condition 3, this involved the slight changing of wording which when seen as a whole had no consequences to the performance of the condition. The condition was still reasonable and necessary to place on the permission and as such I do not consider that the Council has behaved unreasonably in this respect. Consequently, in relation to Condition 3, I do not agree that unreasonable behaviour as defined by the PPG has been demonstrated.
7. For Conditions 4 and 5, these conditions were necessary to be placed on the permission as they sought to request further information from the applicant with regards to bin storage and cycle storage. The conditions as written would have served the purpose of this request of information. Whilst the applicant preferred a differently worded condition, both conditions and the one chosen as part of the Appeal have the same consequence – that the applicant is to submit further information to secure bin and cycle storage. As such, the Council in this respect has not acted unreasonably. I do not agree that unreasonable behaviour as defined by the PPG has been demonstrated for Conditions 4 or 5.
8. With regards to Condition 6, this condition the required submission of details of enclosure in order to separate the neighbouring wedding use and HMO use. Whilst the applicant concentrated on the justification with regards to noise, the justification for the condition was on the basis of avoiding the wedding guests from entering the grounds of the HMO and that the residents of the HMO are not adversely affected by the enjoyment of the land attached to the HMO. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme. I have found that the Council had reasonable concerns about the impact of the proposed development which justified the condition. As such unreasonable behaviour in accordance with the PPG has not been demonstrated.
9. With regards to Condition 7 this sought to restrict occupancy of the residents to 8 persons and not to use the space notated on the plans as 'unused area closed – no entry' as a bedroom. This condition was seen as being repetitive of Condition 8 which sought to restrict occupancy, and also the approved plans, as any change to the configuration of the building would have triggered the need for additional consent. Whilst the conditions were repetitious, their purpose was reasonable and their removal has no real consequence to the operation of the permission. The applicant has not needed to undertake any wasted expense to go to additional work, plans or reports to comply with this particular condition and as such I do not consider that unreasonable behaviour as defined by the PPG has been demonstrated.
10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

J Somers

INSPECTOR