



Costs Decision

Site Visit made on 17 May 2022

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2022

Costs application in relation to Appeal Ref: APP/Z4310/W/21/3288352 23 Hartington Road, Toxteth, Liverpool L8 0SD

- 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 Tablecheck Ltd for a full award of costs against the decision of Liverpool City Council.
 - The appeal is against the refusal of planning permission for a change of use from a small HMO (class c4) to a large HMO (sui generis) arising from the use of 2 existing first floor rooms to accommodate 2 additional en-suite bedrooms (over and above the lawful use of 6 bedrooms), and the creation of a cycle storage area at the side of the premises.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) 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. For an application to be successful, it needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Parties in the appeal process are normally expected to meet their own expenses.
3. The applicant's submission refers to both procedural and substantive grounds. The procedural grounds relate to the Council's handling of the planning application. The substantive basis of the application relates to the reason for refusing planning permission adopted by the Council being flawed, unsubstantiated, vague and entirely unreasonable as it has not been supported by substantive evidence, and so should have clearly have been permitted. Moreover, the applicant considers the Council has not determined similar cases in a consistent manner. These all relate to the applicant's point that the development should have clearly been permitted.
4. The planning application submitted to the Council was in a validation phase for around 10 weeks. It was only after the applicant served an Article 12 Notice on the Council was the planning application validated. Thereafter, it was with the Council for determination for a further 5 months. Again, it was only through the applicant's communication that they would lodge an appeal against non-determination, that the Council made its decision. Whilst I note and understand the Council's points about high workloads, the application was with the Council for a period of time far in excess of the timeframe for this application whether this includes the validation period or not. However, added to this, the extent

and consistency of communication seems to have compounded the applicant's experience. This is regrettable.

5. I am not certain that if the Council had communicated more extensively that it would have led to the planning application being granted. I am aware of multiple schemes in Liverpool for Houses in Multiple Occupation not too far away from the appeal site that have been allowed and dismissed. In general, they have required a judgment to be exercised about their effect on neighbouring occupants living conditions and the character of the area. In essence, each case has been considered on its own merits and this is borne out by the appeal decisions that have been referred to by the main parties.
6. In this case, the Council made a judgement based on an intensified use of the appeal property and it specifically identified concerns with an increase in noise and disturbance and the bearing that this could have on neighbouring occupants. The Council was entitled to make a judgement and I acknowledge that the effects can at times be difficult to quantify. The principle of making a judgement is a well-founded planning principle and one that is evident in the Garmoyle Road decision. However, the Council's starting point for that assessment was far from clear. This was evident from its Statement. Analysis was set out on the basis of a comparison between a family dwelling and an eight-bedroom HMO and on the basis that the property is already in use as a six-bedroom HMO. The property can only be used for one purpose not both.
7. Therefore, either the Council's evidence to support its reason for refusal was inaccurate and not related to the proposal's impact or it was a judgment on the likely effect of the additional bedrooms. Insofar as the latter is concerned, on balance, I am satisfied that the Council did make an informed decision based on their knowledge and experience of the site and its surroundings. The analysis at times was not clear and did draw comparison to a family dwelling, but other parts of the analysis compared the proposal to a six-bedroom HMO.
8. However, other than to explain that existing and future occupants of the appeal property would be surrounded by HMO's, there was no substantive analysis setting out why a different decision should be taken in respect of the appeal scheme compared to the planning permission granted at 27 Hartington Road. That permission was for an eight-bedroom HMO in a similar property on the same street two doors away. The development plan may have been adopted in the intervening period, but it was a material consideration in decision making prior to that. The permission at No 27 ought to have been considered by the Council when it determined the planning application given that it was raised as a material consideration by the applicant as part of their submissions when they submitted the planning application to the Council.
9. Whilst the planning permission at No 27 was not a determinative factor in my decision to allow the appeal, it would have been, and in favour of the appeal scheme, had I considered the proposal to be harmful when considered against the development plan. As the Council did not grapple with this material consideration, it seems to me that it has prevented or delayed development which should clearly be permitted as it has not determined similar cases in a consistent manner without explaining why.

Conclusion

10. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated.

Costs Order

11. 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 the Liverpool City Council shall pay to Tablecheck Ltd, the full costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Liverpool City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew McGlone

INSPECTOR