



Costs Decision

Site visit made on 11 April 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30/05/2022

Costs application in relation to Appeal Ref: APP/Y5420/W/21/3281193 37 Boundary Road, Tottenham, London N22 6AS

- 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 M Larijani - KIKS Group Ltd for a full award of costs against London Borough of Haringey.
 - The appeal was against a refusal to grant planning permission for change of use from a dwelling (C3 use) to a 6 bedroom 6 Person House of Multiple Occupation (HMO) (C4 Use) including rear dormer and installation of two rooflights in front roof slope.
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Decision

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

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. The PPG provides that local planning authorities (LPAs) are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples of this include where an LPA has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations, where an LPA has made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis or where planning permission has been refused on a ground capable of being dealt with by condition.
3. In my appeal decision, I acknowledge that the Gross Internal Area (GIA) of the proposed bedrooms could facilitate greater levels of occupation than that detailed in the applicant's description of development. Even so, the Council's contention that the HMO would be overcrowded is not supported by any objective analysis particularly given that the room sizes would meet national and local standards and that occupation levels are a matter capable of being controlled by condition.
4. There is no evidence to suggest that the Council gave sufficient consideration to the waiver in The Haringey Standards for Houses in Multiple Occupation (2017) (HMO Standards) for a bedroom to be more than one floor away from a kitchen where an adequately sized dining area could be provided. The applicant has provided a copy of a planning permission on a different site in 2020 for a HMO for up to 9 individual occupiers. This indicates that a similar situation would occur in that instance in terms of there being a loft bedroom two-floors

from the kitchen¹. The kitchen in that instance was a similar size to the one before me and indicated a table and chairs could be accommodated. Without evidence to the contrary, this raises doubt in terms of whether the Council has determined similar cases in a consistent manner. Indeed, the Council has not sought to dispute the applicant's case through either an appeal statement or a response to the costs application.

5. While I have dismissed the appeal, this ultimately rests on the absence of a Section 106 to secure 'car-free' housing. I sympathise with the applicant in that respect as I see no reason why, if the Council had been more pro-active in considering matters relating to living conditions for future occupiers of the HMO, it could not have entered into discussions with the applicant to provide the necessary planning obligation. If this had happened the appeal could have been avoided.

Conclusion

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

7. 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 London Borough of Haringey shall pay to Mrs M Larijani - KIKS Group Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to London Borough of Haringey, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Russell

INSPECTOR

¹ LPA Ref HGY/2020/2526